

EXHIBIT

14

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

* * * * *

STATE OF OKLAHOMA, et al.,

Plaintiffs,

vs.

TYSON FOODS, INC., et al.,

Defendants.

No. 4:05-CV-00329-TCK-SAJ

* * * * *

DEPOSITION OF DEAN COUCH
TAKEN ON BEHALF OF THE DEFENDANTS
ON DECEMBER 18, 2006 AT 9:40 AM
IN OKLAHOMA CITY, OKLAHOMA

* * * * *

APPEARANCES:

MS. D. SHARON GENTRY, Riggs, Abney, Neal, Turpen,
Orbison & Lewis, 501 North Broadway, Suite 101, Oklahoma City,
Oklahoma 73118 appearing on behalf of the Plaintiff.

MR. J. TREVOR HAMMONS and MR. ROBERT D.
SINGLETERY, Office of the Attorney General, 4545 North Lincoln
Boulevard, Suite 260, Oklahoma City, Oklahoma 73105-3488
appearing on behalf of the Plaintiffs.

(Appearances continued on Page 2)

Reported By: Jody Graham, CSR, RPR, RMR, CRR

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1 Appearances continued)
2 MS NICOLE M LONGWELL and MR W TYLER BEATY,
3 Joyce, Paul & McDaniel, P L L C., 1717 South Boulder Avenue, Suite
4 200, Tulsa, Oklahoma 74119-4833 appearing on behalf of the
5 Defendant Peterson Farms

6 MR. MICHAEL R BOND, Kutak, Rock, The Three Sisters
7 Building, 214 West Dickson Street, Fayetteville, Arkansas
8 72701-5921 appearing on behalf of the Defendants Tyson Foods,
9 Inc ; Tyson Poultry, Inc ; Tyson Chicken, Inc ; and
10 Cobb-Vantress, Inc

11
12 MR. PAUL E. THOMPSON, JR , The Basset Law Firm,
13 221 North College Avenue, Fayetteville, Arkansas 27202-3618
14 appearing on behalf of the Defendants George's, Inc , and
15 George's Farms, Inc

16
17 MS. VICKI BRONSON, Conner & Winters, 211 East
18 Dickson Street, Fayetteville, Arkansas 72701 appearing on behalf of
19 the Defendant Simmons Foods

20
21 MR COLIN H TUCKER, Rhodes, Hieronymus, Jones,
22 Tucker & Gable, Oneok Plaza, 100 West 9th Street, Suite 400,
23 Tulsa, OK 74103-4287 appearing on behalf of Defendant Cargill

24
25 Also Present: Ms. Laura Waddel

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1 WHEREUPON,
2 DEAN COUCH
3 being first duly sworn, was examined and testified
4 as follows, to wit:

5 DIRECT EXAMINATION

6 BY MS. LONGWELL:

7 Q Good morning. My name is Nicole
8 Longwell. And I'm here on behalf of Peterson
9 Farms. And could you, please, state your name
10 for the record

11 A Dean Couch.

12 Q And, Mr. Couch, what is it that you do
13 with the Oklahoma Water Resources Board?

14 A I'm general counsel to the Oklahoma
15 Water Resources Board.

16 Q And are you here today prepared to give a
17 deposition as the custodian of the documents that
18 you've pulled together pursuant to document
19 requests that were submitted to the state and
20 directed to the Oklahoma Water Resources Board?

21 A Yes.

22 Q Mr. Couch, I'm going to provide you what
23 I'm marking as Exhibit-01 to your deposition. And
24 there's a copy for counsel. If you would, take a
25 moment to look at Exhibit 1. Exhibit 1 is entitled

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1 EXHIBITS

2 Defendants' Exhibits 1 through 5 were
3 marked for identification. See "Exhibit" in the
4 word index.

5 * * * * *

6
7 STIPULATIONS

8 It is stipulated that the deposition of
9 DEAN COUCH may be taken pursuant to Notice
10 and Federal Rules of Civil Procedure on
11 DECEMBER 18, 2006, before Jody Graham, CSR,
12 RPR, RMR, CRR.

13 It is stipulated that all objections to
14 questions, except as to the form of the question,
15 may be made at the time of the trial when said
16 deposition is offered into evidence.

17 * * * * *

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1 "Responses and Objections of Plaintiff, State of
2 Oklahoma to Request for Production of Documents
3 by Peterson Farms, Inc., Directed to the auto --
4 Oklahoma Water Resources Board."

5 Sir, were you involved in preparing these
6 responses and objections by the state?

7 A No.

8 Q Have you seen the document that's
9 identified as Exhibit 1 prior to today?

10 A No.

11 Q Mr. Couch, were you involved in any way
12 in asserting any privileges over the documents
13 that you have prepared today for our review from
14 the Oklahoma Water Resources Board?

15 A Yes.

16 Q Then let me give what you I'm marking as
17 Exhibit-02 to your deposition. And I've got --
18 provided you a copy for counsel, as well. Exhibit 2
19 is entitled, "Notice of Deposition and Request for
20 Production of Documents to Oklahoma Water
21 Resources Board."

22 And that is the first -- after we get past
23 the certificate of service, nine -- eight pages. And
24 so on the ninth page, Exhibit A, is "Separate
25 Defendant Peterson Farm Inc.'s First Set of

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Request for Production of Documents to Oklahoma Water Resources Board."

Are you familiar with what is attached as Exhibit A to the notice that was provided?

A Yes.

Q Is Exhibit A what you utilized in gathering the documents responsive to Peterson's requests?

A Yes.

Q I may switch back and forth between Exhibit 2 and Exhibit 1 during this deposition so you may want to have -- you'll definitely want to have Exhibit 2 handy.

Mr. Couch, how long have you been the general counsel for the Oklahoma Water Resources Board?

A Twenty-one years.

Q Have you always been in that position, or have you held any other positions with the Oklahoma Water Resources Board?

A I've held other -- one other position.

Q And what position was that, sir?

A Staff attorney.

Q So approximately in 1985, you became general counsel of the Oklahoma Water Resources

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deterioration of riparian lands or riparian zones in the Illinois River watershed, including but not limited to investigation, studies, evaluations, assessments or projects conducted or considered, whether or not completed."

Did I read that correctly, sir?

A Yes.

Q Okay. Did you identify in your review of the Oklahoma Water Resources Board records any data related to sedimentation, erosion, deterioration of riparian lands or riparian zones in the Illinois River watershed?

A Yes.

Q Have you produced all data and documents related to the sedimentation, erosion, deterioration of riparian lands or riparian zones in the Illinois River watershed?

A Yes, to the best of our ability.

Q Okay. Is there any limitations on your ability to connect such data and documentation?

A No.

Q Let's stop for a minute and talk about the Oklahoma Water Resources Board document retention policy. What is the policy for retaining documents prepared by the Oklahoma Water

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Board. Would that be accurate?

A Correct.

Q And how long were you a staff attorney for the Oklahoma Water Resources Board?

A Approximately three years.

Q So your term as a staff attorney was some time from 1982, approximately, to 1985?

A Correct.

Q And as general counsel for the Oklahoma Water Resources Board, have you been involved in preparing documents that are responsive to request for production of documents served on the Oklahoma Water Resources Board in the past?

A Yes.

Q Approximately how many times have you been involved in that process?

A I couldn't guess the numbers.

Q Okay. Would you say it was probably more than 25 times?

A Yes.

Q Well, let's start by looking at Exhibit -- let's look at Exhibit 1, request for production number 1 on page 3 of Exhibit 1.

Exhibit 1 states, "Produce all data and documents related to sedimentation, erosion,

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Resources Board?

A We follow the archives and records commission requirements and rules about general retention schedules and agency-specific retention schedules.

Q What is the Oklahoma Water Resources Board agency-specific retention schedule?

A It's the retention schedules approved by the archives and records commission for the Oklahoma Water Resources Board.

Q Okay. So with regards to studies or investigations, evaluations, assessments or projects related to sedimentation, erosion, deterioration of riparian lands and riparian zones, what would be the time frame for retention for such data and documents under your agency retention policy?

A I'm not aware of a specific schedule for that kind of data and documents. So those are typically kept without destruction or otherwise disposing of those permanently.

Q In your search for documents responsive to request number 1, did you identify where any documents which may have been responsive -- data or documents which may have been

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1 responsive were destroyed under the retention
2 policy?

3 A No, I did not.

4 Q Okay. Where -- and I notice that in the
5 room you've got some boxes segregated for us
6 based on different divisions. Maybe we could take
7 a second and you could tell me -- it looks as if
8 right behind you -- directly behind you -- and I'm
9 kind of at a loss for my directions here. But
10 directly behind you in the room is an area called
11 "Water Quality."

12 A Correct.

13 Q What type of documentation would be
14 contained in those boxes behind you, sir?

15 A Those are documents primarily retained
16 by the water quality programs division generally --
17 general documents retained by that division of the
18 Oklahoma Water Resources Board.

19 Q Okay. So those documents that would be
20 responsive to this request and are under the
21 responsibilities of the water quality division of the
22 Oklahoma Water Resources Board would be
23 contained in that -- in those boxes?

24 A Primarily. There are other documents,
25 however.

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1 request for production?

2 A There may be some in there; correct.

3 Q Okay. And then in the -- directly in front
4 of us and to my left are another large grouping of
5 boxes. What -- what type of boxes are those?

6 A Those are retained by the office of
7 general counsel of the Oklahoma Water Resources
8 Board.

9 Q Okay. And what type of documentation
10 would generally be contained in those boxes, sir?

11 A A variety of activities of the agency
12 relating to water quality. And, particularly, the
13 Illinois River watershed.

14 Q Are there any documents responsive to
15 Peterson Farms request number 1 that would be
16 contained in those boxes marked under "the
17 general counsel"?

18 A Yes, there may be.

19 Q And then it appears that on a table
20 against the wall on my left and in front of us is
21 another segment -- or maybe two boxes. Can you
22 tell me what's contained in those two boxes,
23 generally.

24 A Those are marked "P&M." They are
25 additional water quality-type documents that

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1 Q Okay. What other documents would exist
2 in those boxes that are directly behind you and
3 marked under the water quality?

4 A None under the water quality. There are
5 other categories for documents.

6 Q Next to the water quality segment of
7 boxes that you -- what is that -- what segment is
8 that next to that?

9 A It's entitled "Standards."

10 Q Okay. What type of documentation
11 responsive to Peterson's requests are contained in
12 those boxes that are marked under the area
13 "standard"?

14 A The compilation of water quality
15 standards by the section of the water quality
16 programs division of standards gathered studies
17 and other documents, including those generally
18 related to the Illinois River watershed. And those
19 may have documents relating to sedimentation,
20 erosion, deterioration of riparian lands or riparian
21 zones in the Illinois River watershed.

22 Q So what you're telling me is the
23 "standard" section of boxes that you've identified
24 over there will have documents responsive
25 specifically to request number 1 of Peterson Farms

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1 relate to the Illinois River watershed.

2 Q Are there any documents that are
3 responsive to request for production number 1
4 that would be contained in those two boxes?

5 A I don't believe so.

6 MR. HAMMONS: Ms. Longwell, you
7 missed one grouping back there

8 MS. LONGWELL: Thank you, Trevor.

9 THE WITNESS: There are two -- actually,
10 two groupings, lakes and streams and monitoring.

11 Q (BY MS. LONGWELL) And those are two
12 different groupings?

13 A Correct.

14 Q Okay. What type of documentation would
15 be contained in the "lakes" segment of boxes that
16 you have here in the room?

17 A Those retained by the lakes monitoring
18 section of the Oklahoma Water Resources Board
19 water quality programs division relating to the
20 Illinois River watershed. Primarily two lakes, I
21 believe.

22 Q What two lakes?

23 A I believe the Lake Tenkiller and Lake
24 Francis.

25 Q And in the "streams and monitoring"

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1 boxes, what type of documentation is generally
2 contained in those?

3 A Likewise, the streams monitoring section
4 of the water quality programs division documents
5 specifically relating to the Illinois River
6 watershed.

7 Q Mr. Couch, how long has the Oklahoma
8 Water Resources Board been an active agency of
9 the State of Oklahoma?

10 A I don't believe there are any documents
11 specifically on point in this room about that, the
12 history of the Water Resources Board. I could
13 answer that perhaps separately, but not as
14 custodian of these records. I don't know that
15 there are any records.

16 Q Sure. I guess I'm asking the question
17 because I want to know how far back your records
18 may go. So if you wouldn't mind telling me how
19 far back has the Oklahoma Water Resources Board
20 generally kept documents?

21 A Those are, in my mind, two separate
22 questions. This agency was created by statute
23 in 1957. To my knowledge, there are some general
24 minutes on microfiche from those board meetings
25 beginning at that time. And there may be some

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1 old historical library documents, primarily studies
2 and other information, kept perhaps from
3 the 1960s and '50s.

4 Q Is there a -- there are quite a few -- even
5 looking at Oklahoma Water Resources Board's
6 website, there are quite a few reports that deal
7 with lakes and stream monitoring that go back at
8 least into the 19 -- or late 1960s. Have you
9 provided any of those studies which are maybe
10 responsive to Peterson's request here today?

11 A We've attempted to do so in the best of
12 our ability that those can be found by the
13 personnel in those various sections and divisions.

14 Q Are you prepared today that as we go
15 through these requests for production of
16 documents if there's some time limitation on the
17 reports or the studies that you've produced that
18 you would be able to identify those?

19 A Not to my knowledge, a specific time
20 limitation.

21 Q Okay. Has there been any type of
22 catastrophic event that has occurred in the
23 history of the Oklahoma Water Resources Board
24 which may have limited your ability to produce
25 documents and data responsive to Peterson Farms

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1 requests for production?

2 A Yes.

3 Q And what catastrophic event would that
4 be?

5 A The Murrah Building bombing in
6 April, 1995.

7 Q And is there a certain segments of
8 documents that may have been destroyed due to
9 that event, that you can recall? Let me ask it this
10 way. Were there any water quality division
11 documents that were destroyed in that event?

12 A It's most likely there were some
13 documents destroyed.

14 Q Okay. Has the Oklahoma Water
15 Resources Board been able to identify which
16 documents were destroyed in that event?

17 A No.

18 Q So when you say that your personnel may
19 not have been able to -- they've done a thorough
20 search and they haven't been able to identify
21 documents that may be responsive to that that
22 still exist to my request, you're not able to
23 specifically identify why that document may not
24 exist? Is that -- let me just strike that question.
25 Let me ask that a different way.

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1 If I ask you a question related to my
2 request for production of documents, you indicate
3 to me that your personnel has identified all those
4 documents which still exist, which are responsive
5 to that and there are some that do not -- no longer
6 exist, are you able to identify why those
7 documents do not exist?

8 A No.

9 Q Or limit it to that particular event as
10 being the time of its destruction?

11 A No.

12 Q Are there documents that are contained --
13 that may have been maintained under the
14 standards how you've separated -- I don't know --
15 let me just ask it this way. Strike that.

16 Are the documents for standards
17 maintained separately from those of the water
18 quality division, or did you separate them
19 specifically for this document production?

20 A Separated primarily by work section.

21 Q Okay.

22 A There's a standards work section, a lakes
23 monitoring work section, the streams monitoring
24 work section, and water quality general were
25 various studies and data and information that was

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1 either not identified specifically with the work
2 section or otherwise retained generally by the
3 water quality programs division without a specific
4 category or employees' offices that those
5 documents were found.

6 Q Okay. Is there any particular work
7 sections documents that were damaged or
8 destroyed in greater amounts than other sections
9 due to the Murrah Building bombing in 1995?

10 A I'm not aware of a difference.

11 Q Okay. At that time when Oklahoma Water
12 Resources Board was directly across the street
13 from the Murrah Building; is that correct?

14 A That's correct.

15 Q And was there a general location that all
16 of these archives were kept in in that building?

17 A Yes.

18 Q And was that section damaged due to --

19 A Yes.

20 Q And at the time of the bombing, was there
21 some inventory in place at the Oklahoma Water
22 Resources Board that kept track of those
23 documents which were -- which had been
24 archived?

25 A Not that I'm aware of.

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1 A In standards, Phil Moeshel, Chuck Potts,
2 Katera Whittaker.

3 Q Who else assisted you in gathering --

4 A And in beneficial use monitoring program
5 Bill Cauthron.

6 Q Who else, sir?

7 A In streams monitoring, Monty Porter.

8 Q Okay. Anyone else?

9 A And lakes monitoring, Paul Koenig;
10 Nicky Cole, division secretary.

11 Q Was there anyone else that assisted you
12 in gathering these documents?

13 A The documents in this room, the Office of
14 Attorney General staff.

15 Q They assisted you in gathering them or in
16 reviewing them?

17 A Reviewing.

18 Q Did they assist in any way in gathering
19 the documents that are -- that have been provided
20 in this room?

21 A No.

22 Q Who in the Oklahoma Water Resources
23 Board is responsible for maintaining an inventory
24 of documents that are -- or studies and
25 investigations, reports that are maintained by the

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1 Q Okay. Is there anyone else in the
2 Oklahoma Water Resources Board that would have
3 been more familiar with, first, whether there was
4 an inventory for those documents that were
5 maintained at that building in the archives?

6 A No.

7 Q Is there any individual who would have
8 more knowledge whether -- as to the specific
9 documents that were destroyed as a result of that
10 event?

11 A No.

12 Q In your preparation for today's deposition
13 and in preparation for this document review, were
14 there other individuals within the Oklahoma Water
15 Resources Board that assisted you in gathering
16 these documents?

17 A Yes.

18 Q Can you tell me -- can you identify for me
19 those individuals?

20 A Yes.

21 Q Okay. Would you, please, identify them
22 for me.

23 A The division chief of the water quality
24 programs division, Derrick Smithy.

25 Q Okay. Who else?

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1 Oklahoma Water Resources Board?

2 A We no longer have a librarian, and there's
3 no particular individual or one employee that does
4 that.

5 Q Okay. Are there -- is there a general area
6 that archives are maintained now? Or are they
7 maintained by division?

8 A Primarily by division.

9 Q Okay. Now that we've got some of the
10 basic under -- I have a basic understanding of
11 what happened. It will help me to ask more
12 pointed questions to you specific to these
13 requests.

14 Let's move on in Exhibit 1. If you'll look
15 at Exhibit 1, it appears that there are several
16 objections that have been provided in response.
17 You indicated that you haven't -- that you did not
18 participate in preparing -- or that you had not
19 seen this -- this document that's identified as
20 Exhibit 1; is that correct?

21 A Correct.

22 Q Okay. But you also indicated to me that
23 you had assisted in asserting privilege over
24 certain documents; is that correct?

25 A Correct.

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1 Q Are you familiar, sir, with -- or did you
2 suggest to the Oklahoma Attorney General that
3 some of these documents may be protected by a
4 self-evaluative privilege?

5 A No, I have not. I'm unaware of the
6 meaning of that phrase.

7 Q Okay. And when you say that you
8 assisted -- or at least you assisted in asserting
9 certain privileges, did you assert or did you
10 suggest that any privilege applies to any of the
11 documents that you found responsive to request
12 number 1, for data and documents related to
13 sedimentation, erosion, deterioration of riparian
14 lands or riparian zones in the Illinois River
15 watershed?

16 A I'm not aware of a specific document from
17 privilege.

18 Q Let's look at request for production
19 number 2. Request for production number 2
20 states, "Produce all data and documents related to
21 any point source discharges within the Illinois
22 River watershed, including but not limited to
23 investigations, reports, studies or projects
24 undertaken or considered whether or not
25 completed."

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1 Q And what agency does regulate that area?

2 A To my knowledge, the Department of
3 Environmental Quality and the Environmental
4 Protection Agency.

5 Q Okay. But you did do a review of the
6 Oklahoma Water Resources Board's records to try
7 to identify any documents which may be
8 responsive to this request?

9 A Correct.

10 Q Did you identify any privileges that you
11 communicated to the Attorney General's office
12 would apply to any documents you provided that
13 were responsive to request for production
14 number 2?

15 A I can't recall any from request number 2.

16 Q Okay. Let's move on to request for
17 production number 3. Says, "Produce all data and
18 documents related to any complaint or notice of
19 violation received by or made known to the
20 Oklahoma Water Resources Board pertaining to
21 any point source discharges within the Illinois
22 River watershed."

23 Did I read that correctly, sir?

24 A Yes.

25 Q Did you identify any documents -- or any

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1 Have you provided documents responsive
2 to request for production number 2 for the
3 Oklahoma Water Resources Board?

4 A Yes.

5 Q And what areas that we've identified
6 earlier would those documents be located in?

7 A There are some in water quality, some in
8 the lakes and office of general counsel, and
9 perhaps the standards would have incidental
10 information about that.

11 Q Okay. And when I say -- did you -- well,
12 did you provide -- did you find any reports --
13 specific reports that were responsive to this
14 request?

15 A I'm not aware of specific reports in those
16 documents about point source discharges.

17 Q Okay. I guess -- let me -- let me ask the
18 question this way. Did you merely provide the
19 reports that you found that had been prepared
20 regarding point source discharges in the Illinois --
21 discharges in the Illinois River watershed?

22 A To my knowledge, documents would just
23 incidentally contain information or reference point
24 source discharges since our agency does not
25 regulate that area.

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1 complaints or notices or -- let me say that again.

2 Did you identify any data or documents
3 related to any complaints or notices received by
4 the Oklahoma Water Resources Board about any
5 point source discharges?

6 A Yes, to the extent we do have some in the
7 water quality and the -- the office of general
8 counsel, incidental reference to, again, point
9 source discharges complaints or notices,
10 violations in those documents.

11 Q Okay. And in your investigation for
12 complaints and notices, and you say "incidental
13 references," did you -- did you do a search
14 through E-mails within the Oklahoma Water
15 Resources Board for documents that were
16 responsive to request number 3?

17 A We have not reviewed those entirely since
18 my understanding this is for the hard copies of
19 documents we have. And that electronic discovery
20 will be a matter to be addressed at a later date.

21 Q So is it -- is it my understanding, then,
22 that what you're telling me is that you're not
23 providing those -- if you -- you're in the process
24 of reviewing those E-mails. And you're not
25 providing any of those in hard copy. You're

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1 merely -- your intent is to provide them in
2 electronic format at a later date once an order is
3 entered into between the state and the defendants
4 in this case?

5 A For electronic documents, yes.

6 Q Okay. So we are not going to -- we're not
7 going to find in our review of these documents any
8 set of E-mails that have been printed off for our
9 review?

10 A There are some that were printed off and
11 contained, I believe, in the water quality
12 documents.

13 Q Okay.

14 A That were previously printed out.

15 Q They were printed off for our purposes or
16 were they previously printed off for a file?

17 A Printed off for a file, I believe.

18 Q Let's look at request for production
19 number 4 on Exhibit 1. It says, "Produce all data
20 and documents related to any non-point source
21 within the Illinois River watershed, including but
22 not limited to any investigations, reports, studies
23 or projects undertaken or considered, whether or
24 not completed."

25 Did I read that correctly?

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1 Request number 5 says, "Produce all data and
2 documents related to any complaints or notices of
3 violation received by or made known to the
4 Oklahoma Water Resources Board regarding any
5 non-point source within the Illinois River
6 watershed."

7 Did I read that correctly?

8 A Yes.

9 Q Did you find any data or documents
10 related to complaints or notices of violation in the
11 Oklahoma Water Resources Board's records?

12 A Yes.

13 Q Have those been provided to us?

14 A Yes.

15 Q Where would those documents and data
16 be located?

17 A In the water quality general boxes.

18 Q Okay. Would there be any in the office of
19 the general counsel in those -- in your -- in those
20 boxes?

21 A I'm not aware of any specific documents
22 on that point in that category.

23 Q How far back do -- well, let me ask this
24 question first. Would -- is the regulation of
25 non-point sources within the jurisdiction of the

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1 A Yes.

2 Q Did you identify in your search any
3 documents which would be responsive to request
4 number 4?

5 A Yes.

6 Q And where would those documents be
7 located in the boxes and sections that you
8 provided to us?

9 A Water quality, lakes, I believe the --
10 those that are categorized PMM and then office of
11 general counsel.

12 Q Okay. And has an E-mail search been
13 conducted or is in process for E-mails that are
14 responsive to request number 4?

15 A That will be done and gathered.

16 Q And, once again, those E-mails will be
17 provided in electronic format as opposed to hard
18 copy, if any exist?

19 A Correct.

20 Q In response to request number 4, did you
21 identify any privilege that you believed would
22 apply to any document you found responsive?

23 A I don't recall specifically any privileges
24 for request number 4.

25 Q Okay. Let's look at request number 5.

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1 Oklahoma Water Resources Board?

2 A Again, I -- I don't think there's any
3 specific documents that generally relating to the
4 jurisdictional authorities, but my understanding
5 is that it is not a -- an express or specific
6 authority of the Oklahoma Water Resources Board.

7 Q Does the Oklahoma Water Resources
8 Board ever investigate any non-point source and
9 its discharges into any stream or tributary that
10 feeds into the Illinois River water -- Illinois River
11 water -- Illinois River? Excuse me.

12 A There may be investigations based on
13 complaints.

14 Q Does the Oklahoma Water Resources
15 Board keep any kind of complaint file for
16 non-point source discharges in its records?

17 A To the extent there are complaints, those
18 are logged in electronically and referred to the
19 appropriate environmental agency of the state.

20 Q And those electronic -- the logging that
21 you've done electronically of those complaints,
22 have you provided us a printout of that -- the
23 logging of any notices or complaints regarding any
24 non-point source in the Illinois River watershed?

25 A No.

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1 Q Is it your intent to provide us that data
2 electronically?

3 A Yes, to the extent that will be a
4 requirement.

5 Q Explain to me like the log-in system that
6 the Oklahoma Water Resources Board would use if
7 they -- if a complaint is made to them regarding a
8 non-point source discharge in the Illinois River
9 watershed.

10 A Complaint system, the complaint
11 procedures are set forth in rules and specify that
12 an incoming complaint by telephone or written will
13 be evaluated and reviewed to determine whether it
14 is a complaint.

15 Q Uh-huh.

16 A Is defined and logged in, if it is.
17 Referred to if it is not something within the
18 jurisdiction of the Oklahoma Water Resources
19 Board.

20 Q Does the same apply -- the same
21 procedure apply to any complaints that may be
22 received by the Oklahoma Water Resources Board
23 regarding any point source discharges in the
24 Illinois River watershed?

25 A I believe that's how it would be handled.

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1 Q Did you identify any documents
2 responsive to request number 5 that you believe a
3 privilege should be asserted over?

4 A I'm not aware of any specifically.

5 MS. GENTRY: Nicole, can we interrupt
6 here for just one second.

7 MS. LONGWELL: On the record or off the
8 record?

9 MS. GENTRY: On the record.

10 MS. LONGWELL: Okay.

11 MS. GENTRY: Mr. Couch did not prepare
12 the privilege log. So there may be some things on
13 the privilege log that he's not aware of.

14 MS. LONGWELL: Sure. I understand
15 that.

16 MS. GENTRY: Okay. All right. I just
17 didn't want you to be -- I mean, I didn't want it to
18 sound like it was being misrepresented or
19 anything.

20 MS. LONGWELL: Oh, I don't believe that.
21 But I would like, however, to see the privilege log.
22 I don't think that's been provided to us as of yet.
23 But maybe at a break if we could see the privilege
24 log in advance of the document production, that
25 would be helpful.

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1 MR. HAMMONS: Yeah. Absolutely. We'll
2 get it.

3 MS. LONGWELL: Thank you.

4 Q (BY MS. LONGWELL) Let's move on, Mr.
5 Couch, then to request number 6. Request
6 number 6 states, "Produce all data and documents
7 related to any current, former, confirmed or
8 suspected conditions or activities which had, have
9 or may have had -- may have any potential to
10 adversely affect surface water or groundwater
11 quality within the Illinois River watershed,
12 including but not limited to investigations,
13 studies, evaluations, assessments or projects
14 conducted or considered, whether or not
15 completed."

16 Did I read that correctly?

17 A Yes.

18 Q Thank you. Did you find any documents
19 in the Oklahoma Water Resources Board's records
20 that were responsive to request number 6?

21 A Yes.

22 Q Okay. Where would those documents be
23 located in the boxes you've provided?

24 A Probably in all categories based on that
25 request.

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1 Q Is there any other location that these
2 documents and data might be located within the
3 Oklahoma Water Resources Board such as
4 maintained electronically?

5 A I -- I would assume so.

6 Q Have those electronic files been searched
7 to identify any data or documents responsive to
8 request number 6?

9 A No.

10 Q Do you intend on having those electronic
11 formats searched for documents and data
12 responsive to request number 6? Although they
13 may not be provided today in hard copy, but is it
14 your intent to have those electronic formats
15 searched?

16 A Yes.

17 Q Is it your intent to provide any data or
18 documents you find in those electronic formats to
19 Peterson Farms once an order's been entered by
20 the court regarding electronic discovery?

21 A Pursuant to the order and in coordination
22 with the Attorney General's office, I'm sure.

23 Q Okay. And what -- and which segment of
24 boxes in the room would we find probably the
25 greatest concentration of documents responsive to

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1 request number 6?

2 A Water quality general.

3 Q In your review of -- and let me just be
4 clear. You have not yet searched your electronic
5 -- where data documents responsive to request
6 number 6 might be maintained in your electronic
7 formats; you've done a physical search; is that
8 correct?

9 A Correct.

10 Q Okay. So in your physical search, did
11 you identify any documents responsive to request
12 number 6 that you maintain a privilege should be
13 asserted over?

14 A I don't recall specifically. But as
15 mentioned, there may be something on a privilege
16 log. But I don't recall specifically.

17 Q Okay. But, of course, I'm limiting it just
18 you because you indicated to me previously that
19 you had -- there were documents you thought a
20 privilege should be asserted over. And you're just
21 saying at this point you can't recall any
22 responsive to number 6?

23 A Correct.

24 Q And let's look at request number 7, which
25 states, "Produce all data and documents related to

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1 Q And is it your intent to provide those
2 documents in conjunction with an order entered
3 by the Court when working with the Oklahoma
4 Attorney General's office?

5 A Yes.

6 Q Are there databases that exist within the
7 Oklahoma Water Resources Board which might
8 contain data responsive and documents responsive
9 to request number 7?

10 A Not to my knowledge.

11 Q Does the Oklahoma Water Resources
12 Board maintain any databases of information such
13 as stream data?

14 A Yes.

15 Q Okay. And which division would maintain
16 that database?

17 A For purposes of this question or
18 generally?

19 Q No. Generally. Generally speaking.

20 A The water quality programs division, the
21 planning and management division, and I believe
22 the financial assistance division.

23 Q Was there any limitation -- time
24 limitation to the documentation you found
25 responsive to request number 7 -- let me strike

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1 the use of fertilizer, whether commercial or
2 organic in nature, within the Illinois River
3 watershed, including but not limited to any
4 investigations, studies, reports or projects
5 undertaken or considered, whether or not
6 completed."

7 Did I read that correctly, Mr. Couch?

8 A Yes.

9 Q And did you find any documents
10 responsive to request number 7?

11 A Yes.

12 Q And where would those documents be
13 located in the information provided to us in this
14 room?

15 A In water quality general.

16 Q Okay. Did you find or have -- well, let's
17 say, have you conducted any search in electronic
18 formats for any documents responsive to request
19 number 7?

20 A No.

21 Q Is it your intent to conduct some review
22 of OWRB's electronic, how do I say, records, I
23 guess, for documents responsive to request
24 number 7?

25 A Yes.

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1 that.

2 Was there any documents that you found
3 that may have existed at one point in time that
4 were responsive to request number 7, but,
5 subsequently, have been destroyed, either
6 pursuant to the document retention policy or some
7 other catastrophic event?

8 A Not to my knowledge.

9 Q Did you identify any documents that you
10 -- data or documents you found responsive to
11 request number 7 that you believe a privilege
12 should be maintained over or asserted over?

13 A No specific ones, to my knowledge.

14 Q To your knowledge, have all data and
15 documents related to the use of fertilizer, whether
16 commercial or organic in nature, with the
17 exception of the electronic format that we've
18 discussed previously been provided here today for
19 the defendants to review?

20 A Yes.

21 Q Let's look at request number 8. Request
22 number 8 says, "Produce all data and documents
23 related to any facilities that store grain, feed,
24 seed, fertilizer and/or agricultural chemicals
25 within the Illinois River watershed, including but

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1 not limited to any investigations, studies, reports
2 or projects undertaken or considered, whether or
3 not completed."

4 Did I read that correctly?

5 A Yes.

6 Q Have you provided all data and documents
7 related to any facilities -- or go back.

8 Have you produced all data and
9 documents related to request number 8 --

10 A Yes.

11 Q -- and in response to Peterson's request?

12 A Yes.

13 Q Is there any data or documents that's
14 stored electronically that may be responsive to
15 request number 8?

16 A There may be.

17 Q Has there been a search conducted of any
18 electronic formats to determine whether there is
19 any data or documents maintained by the
20 Oklahoma Water Resources Board that are
21 responsive to request number 8?

22 A No.

23 Q Do you intend on -- on conducting such a
24 search of such electronic data?

25 A Yes

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1 Q Okay. Looking at request for production
2 number 9, it states to, "Produce all data and
3 documents related to any dairy waste and/or
4 waste water associated with milk production
5 facilities within the Illinois River watershed,
6 including but not limited to investigations,
7 reports, studies, projects, programs undertaken or
8 considered, whether or not completed."

9 Did I read that correctly?

10 A Yes.

11 Q Okay. Did you identify any -- did you
12 identify any documents and data responsive to
13 request number 9?

14 A Yes.

15 Q Where would those documents be
16 maintained or contained in this room?

17 A In the water quality general.

18 Q Once again, have you conducted any
19 electronic -- any search of any electronic formats
20 maintained or -- have you conducted any search of
21 any electronic data or documents maintained by
22 the Oklahoma Water Resources Board?

23 A Not for this request.

24 Q Is it your intent to conduct a search
25 through the electronic -- for any data or

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1 Q And, once again, will you provide that
2 data so long as it's permitted by the order and the
3 Attorney General's office?

4 A Yes.

5 Q To your knowledge, did you identify any
6 data or documents that are related to request
7 number 8 that you believe a privilege should be
8 asserted over?

9 A I'm not aware of any.

10 Q Was there any limitation time wise or
11 because of an event of any existence of any data
12 or documents that would have been responsive to
13 request number 8?

14 A No.

15 Q Let's move on to request number 9, then.
16 Oh, did I not ask that question?

17 Oh, let me go back. Request number 8,
18 where would I find documents that are responsive
19 in the boxes provided to request number 8?

20 A I think to the extent there would be,
21 under water quality general.

22 Q Okay. And when you say "water quality
23 general," you're talking about the boxings directly
24 behind you; is that correct?

25 A Yes.

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1 documents that are maintained electronically in
2 response to request number 9?

3 A Yes.

4 Q And, once again, is it your intent that
5 you will provide such documentation to Peterson
6 Farms pursuant to a court order and in
7 conjunction with the Oklahoma Attorney General's
8 office?

9 A Yes.

10 Q Let's move on to request number 10,
11 which asks that the "Oklahoma Water Resources
12 Board produce all data and documents related to
13 any groundwater protection activities within the
14 Illinois River watershed."

15 Did I read that correctly?

16 A Yes.

17 Q Did you identify any documents
18 maintained by the Oklahoma Water Resources
19 Board responsive to request number 10?

20 A Yes.

21 Q And where would those documents be
22 located, sir?

23 A Water quality general, standards, the
24 office of general counsel, and not in this room
25 today, but in our planning and management

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1 division, water well drillers and licensing program
2 activity files.

3 Q Is there a reason why those have not been
4 provided to us for our review in this room today?

5 A They were not taken out of the program
6 area. They are working, ongoing files that those
7 employees must have available.

8 Q Okay. And is there a mechanism by
9 which you're going to permit us to review those
10 documents?

11 A Yes.

12 Q Okay. And what is that mechanism?

13 A I will be showing you where those are and
14 locating the employees' files, file cabinets where
15 those are located.

16 Q Okay. Have you conducted any electronic
17 search for any data or documents responsive to
18 request number 10?

19 A No.

20 Q Is it your intent to conduct an electronic
21 -- search for documents and data in electronic
22 format that are responsive to request number 10?

23 A Yes.

24 Q And, once again, will you provide those in
25 response to the court order and in conjunction

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1 documents provided responsive to request
2 number 11 due to either time -- time issues or
3 destruction due to a catastrophic event?

4 A No.

5 Q Have you searched the Oklahoma Water
6 Resources Board's electronic files for any
7 documents responsive to request number 11?

8 A No.

9 Q Is it your intent to conduct a search into
10 the electronic files maintained by the Oklahoma
11 Water Resources Board for information responsive
12 to request number 11?

13 A Yes.

14 Q And will you provide that documentation
15 to Peterson Farms in response -- I mean, in
16 response to an order entered by the Court on
17 electronic discovery and in conjunction with the
18 Attorney General's office?

19 A Yes.

20 Q Let me stop for just a second and ask: Is
21 there any particular reason why a search was not
22 conducted of the electronic files maintained by the
23 Oklahoma Water Resources before today for
24 documents responsive to the -- just the 11
25 requests we've gone through so far?

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1 with the Attorney General's office?

2 A Yes.

3 Q Did you identify any documents
4 responsive to -- and I didn't ask this question --
5 on request number 9 that you believed a privilege
6 should be asserted over?

7 A Not that I'm aware of.

8 Q Did you find any data or documents
9 responsive to request number 10 that you believed
10 a privilege should be asserted over?

11 A I'm not aware of any.

12 Q Let's move on to request number 11.
13 Request number 11 states, "Produce all documents
14 regarding any complaint, data management,
15 program conducted by the Oklahoma Water
16 Resources Board for the Illinois River watershed."

17 Did you find any documents or data
18 responsive to request number 11?

19 A Yes.

20 Q Okay. Where would that information be
21 maintained or contained here?

22 A Under water quality general.

23 Q Any other sections in the room?

24 A Not to my knowledge.

25 Q Okay. Is there any limitations on the

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1 A Any particular reason?

2 Q Uh-huh.

3 A It was our understanding in
4 conversations with the Attorney General's office
5 that would not be required today.

6 Q Okay.

7 A There have been discussions about
8 retaining all such documents in their electronic
9 format and locations, but those are not produced
10 today.

11 Q What was the -- you said you had
12 conversations regarding retaining. Could you
13 describe for me those conversations.

14 A Generally, relative to the litigation and
15 the notice received in the definitions that it was
16 the understanding, my understanding and my
17 relating that understanding to the division chiefs
18 and the executive director, that electronic data
19 and documents are subject to discovery and must
20 be retained accordingly once we had knowledge of
21 the particular request being made.

22 Q So prior to that discussion, did you have
23 any discussions with the state about maintaining
24 electronic data?

25 A We have an E-mail retention policy. And

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1 the archives and records commission's disposition
2 schedules -- records disposition schedules defines
3 records to include electronic data and documents.

4 Q What is the -- what is the E-mail
5 retention policy of the Oklahoma Water Resources
6 Board outside of litigation?

7 A Generally, the requirement is that
8 E-mails will be deleted after 30 days from the
9 individual account, placed on a server for later
10 writing over a disk, I believe I understood. That
11 happens on occasion as disk space is needed or
12 tapes -- tape storage, as those are needed.
13 Whether it's 60 or 90 days, it may vary.

14 Q So is it -- is it possible that there are no
15 E-mails that exist prior to 90 days -- I mean, that
16 there -- let me just say: Would it be fair to say
17 that any E-mails prior to 90 days of receipt of
18 these -- of these discovery responses may no
19 longer exist?

20 A It's possible.

21 Q And the first conversation you had with
22 the Attorney General's office about retaining
23 E-mail, like a litigation hold on E-mails under the
24 current -- I mean, retention policy was when you
25 received the Peterson -- this discovery request?

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1 Or was it prior to that?

2 A I'm not sure of precise dates. It may
3 have been prior to it; it may have been at the
4 time.

5 Q Okay. To your recollection, was it prior
6 to September of 2000 -- of this year?

7 A I'm just -- I don't know.

8 MS. GENTRY: Nicole, would it be okay if
9 we take a quick break?

10 MS. LONGWELL: Sure.

11 MS. GENTRY: It's, like, 10:30.

12 MS. LONGWELL: Sure. No problem.

13 MR. THOMPSON: Thanks.

14 (A recess was taken from 10:37 to 10:55

15 AM.)

16 Q (BY MS. LONGWELL) I want to -- before
17 we move on to number 12, I want to go back and
18 cover a couple of things. One of the things I
19 noted as I kind of just perused the room without
20 any great detail is that the boxes appear to be
21 numbered in each of the sections, starting with 1
22 to whatever. Are those boxes numbered related to
23 this document production?

24 A Yes.

25 Q Okay. So then my next question is -- and

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1 we've gone through 11 requests and identified the
2 general sections that you -- that we would be able
3 to locate responsive documents to each request.
4 Can you identify which specific boxes within a
5 section are actually responsive to our requests?

6 A Generally, but in view of the number of
7 documents, to represent that that's accurate or
8 the only boxes within a section that such
9 documents or related documents may be found, it
10 would probably not be appropriate to designate
11 the specific boxes, again, from that -- assembling
12 all of that and the numbers of documents that
13 there are.

14 MR. HAMMONS: And, Ms. Longwell, to
15 the extent that we have, whenever we give you our
16 responsive index, much like we did at DEQ, we
17 have tried, to the extent that we can, identify
18 specific boxes responsive to your request.

19 MS. LONGWELL: Okay.

20 MR. HAMMONS: And we will provide you
21 that before you --

22 MS. LONGWELL: Thank you.

23 Q (BY MS. LONGWELL) So your only
24 hesitation in providing me those box numbers is
25 that you don't feel like it's the most appropriate

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1 or accurate way to tell me where those documents
2 might be located?

3 A The most accurate, probably.

4 Q Okay.

5 A I might note a clarification to a question
6 or a couple of questions before with respect to
7 electronic documents and E-mail. I did recall that
8 it may have been a year ago. I've forgotten the
9 month even. But many months ago as this
10 litigation had begun -- again, I don't know before
11 or after the actual filing, but there was a meeting
12 and a memorandum or letter that went out to
13 agency heads that may have documents relative to
14 the litigation and the instructions about retaining
15 such documents.

16 Q Who was that memorandum from?

17 A I believe the Attorney General's office.

18 Q But you can't recall specifically when
19 that -- when you received that memorandum?

20 A The date -- it was approximately a year
21 ago.

22 Q Okay.

23 A And then as the specific requests came,
24 the suspension of our general E-mail retention
25 policy was instituted through our IT section and a

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1 meeting held with all employees that may have any
2 documents or in the future get documents and
3 exchange E-mails with respect to any activities
4 relating to the Illinois River watershed.

5 And those employees were instructed to
6 save all E-mails dealing with that subject in any
7 way on a separate personal file. And then as the
8 IT section reviews those documents that are
9 automatically taken off a personal -- out of
10 personal mailboxes, there is a prompt that
11 appears that no documents relating to the
12 litigation or the Illinois River watershed would be
13 permanently deleted.

14 Q Okay. So during our break, you went and
15 refreshed your recollection of what the whole --
16 when -- approximately when the hold was placed?

17 A Correct.

18 Q And the details of that hold?

19 A Correct.

20 Q And in the break, what did you review in
21 order to refresh your recollection of those -- of the
22 timing of the hold and the extent of the hold?

23 A Did not review any particular documents.

24 Q Okay. Did you speak with anyone within
25 the agency?

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1 Q Okay.

2 A And boxed up and taken out of file
3 cabinets or other sources that they're routinely
4 kept.

5 Q Were they identified and -- were there
6 documents identified that were responsive to that
7 Open Records Act request?

8 A To that Open Records Act request? There
9 may have been some. Again, I just -- I can't recall
10 specifics based on the number of those requests
11 over that period of time. There were some that
12 were provided at some points in time. Others,
13 though, after the litigation began and we began to
14 coordinate those requests with the Office of
15 Attorney General, I don't recall those being pulled
16 or identified as an open records request.

17 Q Okay. So, to your knowledge, was
18 Peterson Farms ever permitted to review any
19 documents responsive to their Open Records Act
20 request submitted to the Oklahoma Water
21 Resources Board in August of 2005?

22 A I do not recall the name Peterson Farms.
23 We usually dealt with legal counsel making those
24 requests. Sometimes they would not identify. And
25 to my recollection, the Open Records Act

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1 A No.

2 Q Okay. Did you speak with the Attorney
3 General's individuals?

4 A Yes.

5 Q Okay. All right. Do you recall
6 approximately August of last year receiving an
7 Open Records Act request from Peterson Farms,
8 which requested similar documents to those
9 requested pursuant to the request for production
10 of documents?

11 A I can't recall a specific request with any
12 or all of these. I do recall we had several requests
13 over a period of a few months. And those were
14 typically handled by my then secretary that's no
15 longer with the agency. But as far as specifics
16 and what the parameters of those open records
17 requests are, I don't recall that it dealt with the
18 Illinois River watershed and various activities
19 going on.

20 Q Can you recall whether or not an actual
21 review of -- where actual documents were actually
22 pulled by the Oklahoma Water Resources Board
23 responsive to that Open Records Act request?

24 A Not pulled in the manner as being
25 presented today.

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1 requirements don't require identification of the
2 requester. So it was usually law firms making the
3 request or an individual lawyer for a law firm. So
4 I don't know about Peterson Farms being able to
5 review or --

6 Q Do you -- do you recall whether or not --
7 well, I'll represent to you that I signed this Open
8 Records Act request and that I was -- for Joyce,
9 Paul & McDaniel and we represent Peterson Farms
10 and we represented Peterson Farms at that time.

11 Do you recall whether or not I, as Nicole
12 Longwell, or any member of Joyce, Paul &
13 McDaniel was permitted to come to the Oklahoma
14 Water Resources Board to review any documents
15 that were responsive to that Open Records Act
16 request?

17 A I don't recall.

18 Q Okay. Do you recall whether or not any
19 payment was requested of Joyce, Paul & McDaniel
20 for the cost of the Oklahoma Water Resources
21 Board's employees gathering documents responsive
22 to that Open Records Act request?

23 A I just -- I don't recall.

24 Q Okay. So it's my understanding that -- in
25 regard to that Open Records Act request, that

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1 you're -- that the Oklahoma Water Resources
2 Board had undertaken identifying documents
3 responsive to that request, but at some point in
4 time the Attorney General's office came to the
5 Oklahoma Water Resources Board and indicated
6 that they needed to be a part of any production of
7 any documents to the -- any of the named
8 defendants in the lawsuit we're having this
9 deposition in today.

10 MS. GENTRY: Nicole, we're going to
11 object to this line of questioning with regard to
12 open records. This is a federal lawsuit. And if
13 you want to ask about the request for production,
14 that's fine. But I think it's beyond the scope for
15 you to delve into this open records request.

16 MS. LONGWELL: And I'll -- your
17 objection's noted and I'll continue my question.
18 And I would ask the court reporter to read back
19 my request -- my question, please, if you would.
20 (Whereupon the record was read.)

21 Q (BY MS. LONGWELL) Can you answer that
22 question?

23 A I don't believe it was the Attorney
24 General coming to the Oklahoma Water Resources
25 Board.

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1 Q What is your recollection of how the
2 Attorney General's office became involved in that
3 particular Open Records Act request, as you
4 indicated in your previous answer?

5 A I don't know about a particular Open
6 Records Act request, but, generally, about open
7 records requests, I think I contacted the Office of
8 Attorney General to provide that basic information
9 that we were receiving requests.

10 Q And that's typical in every open act --
11 Open Records Act request that you receive? That's
12 a typical --

13 A To coordinate and request of the Office of
14 Attorney General?

15 Q Yes.

16 A No.

17 Q Only certain -- is there a certain reason
18 why you -- certain types of cases that you are --
19 or certain Open Record Act requests that you
20 would engage the assistance of the Oklahoma
21 Attorney General's office?

22 A Dealing with the Illinois River watershed
23 or the Arkansas/Oklahoma -- Arkansas River
24 Compact Commission activities that, of course,
25 deals with the Illinois River and Illinois River

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1 watershed.

2 Q Were you directed to do that, sir?

3 A To do what?

4 Q To make that contact with the Oklahoma
5 Attorney General's office if you received an Open
6 Records Act regarding the Illinois River watershed
7 or the Oklahoma/Arkansas Compact?

8 A No.

9 Q You undertook that yourself?

10 A Yes.

11 Q Okay.

12 A There may be one I recall where I did not
13 know and it was not represented who the person
14 was representing. And, in fact, there was no
15 indication of it being a lawyer representing the --
16 but I remember a Mr. Brown, Mark Brown perhaps.
17 And it dealt with the Arkansas -- Arkansas --
18 Oklahoma/Arkansas River Compact Commission
19 and documents relating to its negotiation. And I
20 simply looked on the Internet for that name and
21 determined that it was from a law firm that I had
22 heard was involved with this litigation.

23 Q But you don't recall -- you don't recall an
24 Open Records Act request from my name, Nicole
25 Longwell?

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1 A I remember the Joyce, Paul name and
2 perhaps your name. Again, as far as invoices for
3 filling such requests, my secretary at the time
4 usually coordinated that, would advise me about
5 it. But as far as the specific written documents, I
6 did not review those in great detail.

7 Q Let's go back to this document
8 production. To what -- I mean, to what extent did
9 you review the documents that are actually
10 contained in each of these boxes, under each of
11 these divisions to determine whether they were
12 responsive to these requests?

13 A Various summary reviews. Primarily
14 relying on the staff of those various sections to
15 ensure they dealt with the Illinois River watershed
16 or aspects of it, whether a study or other
17 documents.

18 Q Okay. So I'm -- your summary review,
19 what did that entail? I was a bit confused by your
20 answer. So what did your summary review of the
21 documents contained in the boxes entail?

22 A Just a review with the -- those employees
23 that pulled those documents. And as we sat down
24 with the Office of Attorney General's staff to
25 ensure that those were responsive to the request.

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1 Q So your -- are you relying upon those
2 staff members within those divisions that you
3 identified previously to ensure that all the
4 documents that were within that division that
5 were responsive to the request had been provided?

6 A Yes.

7 Q And then your review was merely a
8 summary review of what they had pulled together
9 to determine -- to verify that those were, in fact,
10 responsive to the request?

11 A Yes.

12 Q And, once again, the review of these
13 employees, as well as your review of the agency's
14 documents, were limited to physical documents
15 only?

16 A Yes.

17 Q Are you familiar with -- let's take, for
18 instance, the water quality division. You
19 indicated that you coordinated with Derrick
20 Smithy; is that correct? And I think some --
21 maybe another individual.

22 Derrick Smithy is the individual you
23 identified as coordinating with for the water
24 quality division of the Oklahoma Water Resources
25 Board; is that correct?

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1 A That's one of the employees as division
2 chief.

3 Q Okay. Did you deal with any other
4 employees at the water quality section -- and I'm
5 referring specifically to the boxes you've identified
6 behind you as being from the water quality
7 section. Did you deal with any other employees
8 besides Derrick Smithy about that --

9 A Yes.

10 Q Who are those individuals?

11 A Nicky Cole, Bill Cauthron, Monty Porter,
12 Paul Koenig. Those would be the primary.

13 Q And when I look at that, I see that each
14 -- you previously identified each of those
15 individuals with regards to specific -- other
16 specific types of sections that you've identified
17 here, such as Paul Koenig and Nicky Cole
18 assisted you in gathering documents for lakes and
19 the lakes boxes that are -- that are here in this
20 room. You identified them previously for that
21 purpose. Is that correct?

22 A Nicky Cole is division secretary. So she
23 assisted for all of the sections within the water
24 quality programs division.

25 Q Right.

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1 A Including the water quality general
2 boxes--

3 Q Okay.

4 A -- the standards boxes, the lakes boxes
5 and perhaps the streams and monitoring boxes.

6 Q Okay. Well, that's -- I appreciate that
7 clarification. Thank you. That helps me ask more
8 pointed questions to you.

9 Explain to me when -- once you received
10 these requests for production of documents, how
11 you went about ensuring that the Oklahoma Water
12 Resources Board provided all of the documents
13 within its possession that were responsive to
14 them.

15 A Primarily through a memorandum and a
16 copy of the document to the division chiefs of the
17 three divisions who have documents that appeared
18 to be responsive. In following up with meetings
19 with those division chiefs or other individuals
20 that would have control or retain those
21 documents, either at their work stations or would
22 know where they are.

23 Q In that memorandum did you break down
24 which specific requests you felt fell into each of
25 the divisions, the three divisions you identified?

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1 Did you identify for them specific requests for
2 them to focus their search on? Or did you give
3 them the entirety of the document request?

4 A I provided the document that had been
5 provided to me by the Attorney General's office
6 containing the 48 requests with an indication that
7 they needed to review all of those. There may
8 have been one or two -- I just don't specifically
9 recall at this point -- that relate to water
10 quantity, for instance. And that is our planning
11 and management division and water rights files,
12 both groundwater and stream water, that may be
13 responsive to that request.

14 So I might have pointed out -- there may
15 be another on financial assistance division type of
16 records, loans and grants for projects. Likewise,
17 those might have been specifically pointed out for
18 additional review. But, otherwise, the document
19 in whole was provided to all three of those
20 divisions.

21 Q Okay. Did you undertake any effort to
22 identify any documents -- specific documents you
23 felt were responsive to the requests -- Peterson
24 Farms request for production of documents?

25 A That I felt?

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1 Q Yes.

2 A Yes. The office of general counsel
3 documents were gathered by me and placed in
4 boxes as I gathered those from the various areas
5 that we have such documents.

6 Q Did you specifically identify any
7 documents from each division, maybe either a
8 report or investigation, that you specifically
9 identified and indicated to a division to provide
10 you the documentation for?

11 A I do not recall specific reports or
12 investigations or documents like that.

13 Q And, I guess, in your memorandum, you
14 didn't -- I don't want to say I guess. Let me ask
15 you a question.

16 In your memorandum, did you indicate to
17 those division heads that they needed to search
18 their electronic files for responsive documents?

19 A I advised that that would be a matter that
20 we will be addressing at some later time, but that,
21 nevertheless, the previous discussions and
22 requirements to retain those documents still
23 applied.

24 Q Okay. And just so we're clear. On the
25 previous requests that we've gone through, I

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1 these requests, but due to either a document
2 retention issue or a destruction policy and/or a
3 catastrophic destruction, like we discussed
4 previously, that document or data no longer
5 existed?

6 A They did not provide that information to
7 me, and I'm unaware that we have that kind of
8 information that they can rely on.

9 Q Okay. And I guess my question is: If I'm
10 looking for a specific report from the Oklahoma
11 Water Resources Board which would be responsive
12 to one of my requests and it's not identified as a
13 privileged report and I'm looking for the backup
14 data for that report, how am I to know that the
15 backup data is not in the box because someone
16 didn't either pull it or because the backup data no
17 longer exists because of some document retention
18 issue or a catastrophic event which destroyed that
19 data?

20 A To the extent that the backup data was
21 available and relates to that, in discussing the
22 kinds of documents needed for these requests, I'm
23 assuming those employees pulled all of that data
24 that they had available to them, the physical
25 documents here at the agency.

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1 through I I, when you've indicated that you
2 provided all documents responsive to those
3 requests, you have -- in fact, have only produced
4 all physical documents you believe are responsive
5 to that request and not electronic documents?

6 A That's correct. Except to the limited
7 extent there have been paper copies made of some
8 E-mails previously in the water quality programs
9 division, primarily.

10 Q To your knowledge, these individuals in
11 these divisions that assisted you in gathering the
12 documents responsive to these requests, did you
13 ask them to identify when they -- when they may
14 have located a document that either in total or in
15 part would have been responsive, but no longer
16 existed?

17 A Could you repeat the question.

18 Q It was a poor question. I apologize.

19 The individuals who were in these
20 sections that worked with you to gather the
21 documents that were responsive to these requests,
22 was there any mechanism that you -- that they
23 utilized to tell you whether or not at one point in
24 time there was a document within Oklahoma Water
25 Resources Board's files that were responsive to

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1 Q Okay. But not the electronic -- any
2 electronic data that might be there to support
3 that? We've already talked about that; correct?

4 A Correct. There have been electronic data,
5 again, collected, a few E-mails that were copied
6 out on paper previously and some CD data that
7 was transferred to CD. But all other documents
8 have not been printed out on hard copy and would
9 be retained.

10 Q And, I guess, my -- my question is -- and
11 when I come to that report and I don't find that
12 backup data, there's no indication in the file that
13 it either -- that it didn't -- the reason for its -- it
14 not to be there, its lack of existence in what
15 you've produced. There's no reason provided with
16 that report if the data's not there. I mean, would
17 that be correct?

18 A There's not a specific separate document,
19 no, providing that information.

20 Q And who -- who -- I mean, who would be
21 able to provide that information to me once I
22 review these documents and I identify -- in the
23 event that I identify a report and I find no backup
24 data for that report? What individual within the
25 Oklahoma Water Resources Board could give me

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1 that answer as to why that data's not provided to
2 me?

3 A I assume if it's electronic-retained data,
4 that that will be addressed in the order in
5 conjunction with the Attorney General about what
6 data is being requested electronically, if it does
7 exist electronically, to be produced at that time.
8 So I don't know what -- and can't provide names of
9 individuals --

10 Q Okay.

11 A -- here about that without knowing those
12 requests.

13 Q So if it's electronic, though, I'm not going
14 to know that -- until there's an electronic
15 production, I'm not going to know whether or not
16 the reason that data is not there because it's in
17 electronic format versus it's been destroyed?

18 A There's no information like that, to my
19 knowledge, in those files.

20 Q Okay. Let's go ahead and move on to
21 request number 12. Request number 12 says,
22 "Produce all data and documents related to any
23 investigations, assessments, projects, reports or
24 studies, the OWRB conducted, considered or
25 participated in, whether or not completed, with

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1 boxes that may contain that information?

2 A Yes.

3 Q Can you provide me those specific box
4 numbers and the section that they're in?

5 A In water quality, one, two, three, four,
6 five, six, seven, eight, nine, ten, eleven, twelve,
7 thirteen, fourteen. Standards one, two, three and
8 four. There are some other rolling files in the
9 water quality programs division not in here today
10 that may be responsive. The lakes, looks like the
11 -- it's just one box. Planning and management,
12 both of those boxes. Standards, one, three, four,
13 five, six, seven, eight, nine, ten. And the office of
14 general counsel, thirteen, fifteen, seventeen and
15 eighteen.

16 Again, I --

17 Q I understand your caveat for accuracy --

18 A -- would note that these may not be all of
19 the boxes in all of those categories.

20 Q I appreciate that. But that --

21 A And there also is other documents not in
22 this room, but found in other locations at the
23 agency that we did not pull.

24 Q Are you waiting --

25 A Financial assistance division. Planning

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1 regard to the assessment of the condition of, the
2 protection of or restoration of any lands, waters
3 or natural resources within the Illinois River
4 watershed."

5 Did you identify any documents
6 responsive to this request?

7 A Yes.

8 Q Have all documents and data responsive
9 to this request that exists been provided in
10 response to request number 12?

11 A Except for electronic data, and to my
12 knowledge, yes.

13 Q And where would that data be located?

14 A In virtually all of these categories with
15 respect to lands, waters and natural resources,
16 assessment of the condition, protection and
17 restoration.

18 Q Were you able to identify any specific
19 boxes within any of these sections where these
20 documents might be located?

21 A There may be, again, specific boxes. But
22 I think those boxes are located in virtually all of
23 these categories of boxes.

24 Q Okay. But you have identified what you
25 believe to be certain -- some boxes -- specific

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1 and management division, including the well
2 drillers licensing program and the rolling file
3 cabinets in the water quality programs division.

4 Q Are we going to be provided access to
5 those documents today?

6 A Yes.

7 Q Or today or tomorrow. I guess I won't
8 limit it to today.

9 Okay. Let's look at -- so my
10 understanding with -- with regards to request
11 number 12 is your answer is the same with
12 regards to the documents maintained
13 electronically. And that is you have yet to
14 conduct a search; is that correct, into those
15 electronic format -- or electronic media that may
16 contain documents responsive to request
17 number 12?

18 A An additional search; correct. We have
19 not done that.

20 Q Okay. And is your intent to conduct such
21 a search through the electronic media that may
22 contain documents or data responsive to request
23 number 12; is that correct?

24 A Yes. Pursuant to the order in
25 conjunction with the Attorney General's office.

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1 Q Okay. And that you'll produce the same
2 in conjunction with -- I mean, in accordance with
3 the order and in conjunction with the Attorney
4 General's office?

5 A Correct.

6 Q Let's move on to -- oh, let me ask you one
7 last question with regards to request number 12.
8 Did you find any specific data or documents that
9 you believe the -- a privilege applies to?

10 A I don't recall a specific -- any specific
11 documents.

12 Q When you -- when you identified
13 documents that you believed -- or data that you
14 believed a privilege should apply to, did you just
15 inform the Attorney General's office of that
16 information? Or did you prepare your own list
17 with regards to those documents?

18 A No. I just advised the Attorney General's
19 office.

20 Q Of specific document or datas or general
21 -- or generally?

22 A Specific documents.

23 Q And did you do that verbally? Is that how
24 you provided that information to the Attorney
25 General's office?

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1 today, where would those documents be located?

2 A In the water quality general section.

3 Q So I'm assuming that you have not
4 provided any electronic information regarding the
5 -- any geographical database system within the
6 possession of the Oklahoma Water Resources
7 Board at this time?

8 A Correct.

9 Q Did you conduct any other searches into
10 electronic media for documents or data responsive
11 to request number 13 at this time?

12 A At this time, no.

13 Q Again, is it your intent to conduct such a
14 search in accordance with a court order and in
15 coordination with the Attorney General's office?

16 A Yes.

17 Q And will you provide all electronic
18 document and data responsive to request
19 number 13 in accordance with the court order and
20 in coordination with the Attorney General's office?

21 A Yes.

22 Q Did you identify any documents or data
23 either electronically or physically that were --
24 that you believe a privilege should be asserted
25 over in response to request number 13?

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1 A Yes.

2 Q Okay. Okay. Looking at request
3 number 13, it states, "Produce all data and
4 documents contained within any environmental
5 and/or natural resources and/or geographical
6 database system established by, used by or in
7 possession of the Oklahoma Water Resources
8 Board regarding the Illinois River watershed."

9 Did I state that correctly?

10 A Yes.

11 Q Did you identify any documents
12 maintained by the Oklahoma Water Resources
13 Board responsive to request number 13?

14 A Yes.

15 Q Have you provided those documents?

16 A Yes.

17 Q Have you provided all documents?

18 A Except for any electronic data documents.

19 Q Okay. Is there a electronic database
20 system that exists that contains geographical
21 information related to the Illinois River
22 watershed?

23 A As far as I know, yes.

24 Q Where would the documents that you have
25 identified as responsive and you've provided to us

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1 A I don't recall of any specific documents.

2 Q What privilege is it that you believe that
3 the Oklahoma Water Resources Board could assert
4 over the documents and data that's responsive to
5 these requests?

6 A What privilege?

7 Q Yes. Which privilege -- what privilege?

8 A I assume it would vary based on the
9 document. Either attorney/client or attorney
10 work product.

11 Q Okay. So they're all related to the
12 attorney/client and nothing -- any privileges that
13 you believe you can maintain pursuant to a
14 statute, Oklahoma statute?

15 A I don't recall of any specifics.

16 Q Okay. Let's move on to request
17 number 14. Request number 14 asks that, "All
18 data and documents related to soil conservation,
19 erosion control, non-point source management in
20 the Illinois River watershed, including but not
21 limited to investigations, reports, studies or
22 projects undertaken or contemplated, whether or
23 not completed."

24 Is that correct?

25 A Yes.

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1 Q Okay. Have you provided any documents
2 or data responsive to request number 14?

3 A Yes.

4 Q And where would those -- where would
5 that information be contained within the boxes
6 here in this room or within the Oklahoma Water
7 Resources Board?

8 A Water quality standards, lakes, standards
9 and the office of general counsel.

10 Q Okay. Have you provided all data and
11 documents within the possession of the Oklahoma
12 Water Resources Board which is responsive to
13 request number 14?

14 A Except for electronic data.

15 Q Okay. At this point have you conducted
16 any search -- electronic -- I mean, any search of
17 any electronic media for documents or data
18 responsive to request number 14?

19 A Not for this deposition. Previously, there
20 may have been pursuant to open records requests,
21 electronic searches. But, primarily, those were
22 assigned to the division staff and personnel to
23 review that. So I'm unaware of the specifics on
24 that. But for this request at this time we have
25 not.

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1 Q Okay. Is it -- do you intend on
2 conducting such a search and providing any
3 responsive materials identified pursuant to the
4 court order -- a court order in this case and in
5 conjunction with the Attorney General's office?

6 A Yes.

7 Q Did you identify any specific documents
8 or data which you believe a privilege should be
9 asserted over in response to request number 14?

10 A Not that I recall.

11 Q Okay. Let's move on to request
12 number 15. States, "Produce all data and
13 documents related to the condition and/or
14 quantity of surface waters and groundwater in the
15 Illinois River watershed, including but not limited
16 to investigations, reports, studies, projects,
17 monitoring, evaluations and assessments
18 undertaken or considered whether or not
19 completed."

20 Did I read that correctly?

21 A Yes.

22 Q Did you find any documents within
23 Oklahoma Water Resources Board's records
24 responsive to request number 15?

25 A Yes.

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1 Q Have you provided that -- that material?

2 A Yes. Both here and in the planning and
3 management division records for water quantity.

4 Q Okay. Have you conducted any search of
5 electronic media for documents responsive -- data
6 or documents responsive to request number 15?

7 A Not at this time.

8 Q Okay. Do you intend on conducting such
9 an electronic search -- or search of electronic
10 media and providing any -- any data or documents
11 identified as responsive to request number 15,
12 pursuant to an order from the Court in this case
13 and in conjunction with the Attorney General's
14 office?

15 A Yes.

16 Q Did you identify any documents or data
17 that you believe a privilege should apply to with
18 regards to request number 15?

19 A None that I recall.

20 Q Now, prior to this deposition you
21 indicated that you provided to the Attorney
22 General's office in writing those documents which
23 you believe a privilege should be asserted over.
24 Did you review that document before you came to
25 this deposition today?

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1 A I'm sorry. You asked --

2 Q I asked -- you had indicated that -- that
3 the documents that you believe a privilege should
4 be asserted over that are in the possession of the
5 Oklahoma Water Resources Board that may be
6 responsive to the requests from Peterson Farms,
7 that you provided a list to the Attorney General's
8 office of those documents; is that correct?

9 A No.

10 Q No, you did not provide a list?

11 A No.

12 Q I thought that I heard that. So I must
13 have misheard you. I apologize.

14 A I think you asked whether I provided a
15 list, and I said I did not. It was mostly verbal as
16 individual documents were reviewed.

17 Q Okay. When the review was conducted --
18 after you gathered all these documents, did the
19 Attorney General's office come in and review these
20 documents, as well?

21 A Yes.

22 Q Did you -- were you -- did you participate
23 in that review process?

24 A Not in a detailed manner.

25 Q Okay. Is that when you provided verbally

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1 your input as to whether a privilege should apply
2 or not apply to a particular document?

3 A Yes.

4 Q Okay. Have you had the opportunity to
5 review the privilege log prepared for the
6 documents that have been provided to Peterson
7 Farms responsive to their document request?

8 A No.

9 Q So at this point in time you don't know
10 whether or not those documents which you
11 indicated you thought a privilege should apply are
12 actually on the privilege log or not?

13 A I'm unaware.

14 Q Okay. I think we can move on to request
15 number 16, Mr. Couch. It states, "Produce all
16 documents related to procedures and policies
17 applicable to the waters, lands or operations in
18 the Illinois River watershed for conducting
19 sampling of poultry litter, soils and water,
20 including current and superseded versions of such
21 policies and/or procedures."

22 Did you -- did you identify any documents
23 related to procedures or policies as they are
24 identified in request number 16?

25 A Yes.

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1 Did you identify any data or documents
2 responsive to request number 17?

3 A Yes.

4 Q And where are that -- where would that
5 data or -- where would those data or documents be
6 located?

7 A The water quality general, lakes,
8 planning and management and office of general
9 counsel. Standards has some of those and the
10 rolling file cabinets, as well.

11 Q Is there any documentation contained in
12 the streams and monitoring that would be
13 responsive to request number 17?

14 A There may be, yes.

15 Q Did you produce all data and documents
16 responsive -- within Oklahoma Water Resources
17 Board's possession responsive to request number
18 17?

19 A Except electronic data and documents.

20 Q Have you conducted a search of electronic
21 media maintained by the Oklahoma Water
22 Resources Board for all data and documents
23 responsive to request number 17?

24 A Not at this time.

25 Q Do you intend on conducting a search of

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1 Q Where are those located?

2 A Primarily in water quality generally, the
3 standards and the office of general counsel.

4 Q Did you conduct a search of electronic
5 media for documents responsive to request
6 number 16?

7 A Not at this time.

8 Q Okay. Do you intend on conducting a
9 search of electronic media and producing any
10 documents you -- or that you identify as
11 responsive to request number 16 pursuant to an
12 order from this Court and in conjunction with the
13 Attorney General's office?

14 A Yes.

15 Q Do you recall any documents that you
16 identified responsive to request number 16 that
17 you believe a privilege should be asserted over?

18 A No specific documents.

19 Q You don't recall any specific documents?

20 A I do not recall any specific documents.

21 Q Request number 17 states, "Produce all
22 data and documents regarding any sampling
23 and/or analysis of poultry litter, livestock
24 manure, compost, biosolids, sludge, soil or water
25 conducted in the Illinois River watershed."

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1 electronic media and producing any data or
2 documents that you identify as responsive to
3 request number 17 and pursuant to an order from
4 this Court and in conjunction with the Attorney
5 General's office?

6 A Yes.

7 Q Did you identify in your review any data
8 or documents responsive to request number 17
9 that you believe a privilege should be asserted
10 over?

11 A Not to my recollection.

12 MS. LONGWELL: I need to take a break.
13 (A lunch recess was taken from 11:43 AM
14 to 1:07 PM.)

15 Q (BY MS. LONGWELL) Mr. Couch, I would
16 like you to focus your attention on request
17 number 18 in Exhibit 1. Request number 18
18 states, "Produce all data and documents related to
19 any nursery currently or formerly located within
20 the Illinois River watershed, including but not
21 limited to any sampling of soil, water runoff or
22 effluent conducted on or" -- and there's nothing
23 after that.

24 Did you identify any documents or data
25 responsive to request number 18?

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1 A Are you reading from Exhibit 1?

2 Q Yes.

3 A I was noting on both copies in Exhibit 2

4 and 1 that request number 18 ends with the word

5 "or." And with respect to a nursery, we did

6 identify some documents.

7 Q Okay. So you identified documents

8 regarding nurseries within the Illinois River

9 watershed; is that correct?

10 A Yes.

11 Q And did you provide those documents?

12 A Yes.

13 Q And where would those documents be

14 located in the boxes provided?

15 A In the standards category and office of

16 general counsel.

17 Q Did you conduct any searches into -- in

18 electronic media for any information regarding

19 nurseries within the Illinois River watershed?

20 A Not at this time.

21 Q Do you plan on conducting any

22 investigation into electronic media possessed by

23 the Oklahoma Water Resources Board regarding

24 nurseries in the Illinois River watershed?

25 A Pursuant to court order and in

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1 coordination with the Attorney General's office.

2 Q Okay. And you'll produce any documents

3 you -- that you identify as responsive regarding

4 nurseries located in the Illinois River watershed

5 in accordance with the Court's order and in

6 conjunction with the Attorney General's office?

7 A Yes.

8 Q Did you identify any documents regarding

9 nurseries currently or formerly located in the

10 Illinois River watershed which you found -- which

11 you believe a privilege should be asserted over?

12 A Not to my recollection.

13 Q Do you recall any specific document types

14 or categories of documents that you believed a

15 privilege should be asserted over that are

16 possessed by the Oklahoma Water Resources Board

17 in response to any of these discovery requests?

18 Like a specific category or document, do you recall

19 any specifics?

20 A None except for internal communications.

21 There may be some with the Arkansas --

22 Oklahoma/Arkansas River Compact Commission, of

23 which I'm a legal committee member for Oklahoma.

24 Documents with the Oklahoma commissioners.

25 Other internal documents with either staff or

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1 communications with the Attorney General's

2 office.

3 Q And when you say "internal discussions

4 with staff," is that in your capacity as general

5 counsel for the OWRB or is that in --

6 A Correct.

7 Q And when you say internal documents

8 related to the compact commission, is that also in

9 your capacity as counsel for the commission?

10 A Correct. The Oklahoma commissioners.

11 Q Okay. Let's move on to request

12 number 19. Request number 19 states, "Produce

13 all documents related to, referencing or generated

14 pursuant to any cooperative agreements which the

15 OWRB has entered into with any Oklahoma or

16 federal agency, including the Oklahoma Attorney

17 General regarding the Illinois River watershed."

18 Did you identify any documents

19 responsive to request number 19?

20 A Yes.

21 Q Where would those documents be located?

22 A In water quality general, lakes, the two

23 planning and management and office of general

24 counsel.

25 Q Did you find any documents related to the

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1 streams and monitoring?

2 A I don't recall that we did.

3 Q Okay. Were you able to conduct any

4 electronic search -- or have you conducted any --

5 any search into electronic media possessed by the

6 Oklahoma Water Resources Board regarding those

7 documents sought in request number 19?

8 A Not at this time.

9 Q Do you intend on searching electronic

10 media possessed by the Oklahoma Water Resources

11 Board and then subsequently producing any

12 responsive documents to request number 19

13 pursuant to a court order and in conjunction with

14 the Oklahoma Attorney General's office?

15 A Yes.

16 Q Do you recall any category of documents

17 or specific document that you identified as

18 responsive to request number 19 over which you

19 believe a privilege should be claimed?

20 A There may be with the Attorney General's

21 office.

22 Q Okay. What about any other cooperative

23 agreements with any other federal or Oklahoma

24 state agency? Did you -- do you recall asserting

25 any privileges over any cooperative agreements

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1 you may have found with those agencies, other
2 than the Attorney General's office?

3 A Not that I recall.

4 Q Okay. Moving on to request number 20.
5 It states, "Produce all data or documents related
6 to the development of a total maximum daily load
7 for any constituent for any waters located within
8 the Illinois River watershed."

9 Did you find any documents or data
10 responsive to request number 20?

11 A Yes.

12 Q Did you provide all data or documents
13 responsive to request number 20 within the
14 possession of the Oklahoma Water Resources
15 Board?

16 A Yes.

17 Q Did you search all electronic media
18 within the possession of the Oklahoma Water
19 Resources Board for information responsive to
20 request number 20?

21 A Not at this time.

22 Q Do you intend on searching all electronic
23 media within the possession of the Oklahoma
24 Water Resources Board and then subsequently
25 producing such responsive documents in

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1 Did you identify any documents
2 responsive to request number 21?

3 A Yes.

4 Q Did you provide all documents that you
5 found responsive to request number 21?

6 A Yes, except electronic data and
7 documents.

8 Q Where would those documents that you
9 found responsive to request number 21 be located?

10 A Also general counsel files.

11 Q With regards to the electronic -- with
12 regards to electronic data, have you undertaken a
13 search and all -- through all of the electronic
14 media in the possession of the Oklahoma Water
15 Resources Board for documents responsive to
16 request number 21?

17 A No, not at this time.

18 Q Do you intend to conduct a search into
19 the electronic -- all electronic media within the
20 possession of the Oklahoma Water Resources
21 Board and then subsequently produce all
22 responsive documents responsive to request
23 number 21?

24 A Yes, pursuant to court order and in
25 cooperation with the Attorney General's office.

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1 accordance with a court order and in conjunction
2 with the Oklahoma state -- I mean, the Oklahoma
3 Attorney General's office?

4 A Yes.

5 Q Do you recall any data or documents that
6 you found to be responsive to request number 20
7 that you have not produced?

8 A Except for electronic data and documents.

9 Q Where is the -- where would the
10 documents responsive to request number 20 that
11 you have produced be located?

12 A In the water quality general, lakes,
13 standards and office of general counsel.

14 Q Do you recall any documents or data that
15 you believe privilege should be asserted over in
16 response to request number 20?

17 A I don't recall any.

18 Q Request number 21 states, "Produce all
19 documents related to any executive sessions
20 involving any member or representative of OWRB
21 required to be published, kept and/or maintained
22 under the Oklahoma Open Meeting Act 25 OS
23 Section 301 et sequence -- in sequence, including
24 but not limited to notices, agendas and minutes
25 from January, 2004, through the present."

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1 Q Did you identify any documents
2 responsive to 21 that you claim a privilege should
3 be asserted over?

4 A I don't recall any specific documents, no.

5 Q Okay. Do you recall any categories of
6 documents that you believe are responsive to
7 request number 21, but that a privilege should be
8 asserted over?

9 A Not that I recall. Executive sessions, to
10 the extent there are executive sessions, those
11 documents -- minutes of the executive session are
12 not to be released. But other than that, I don't
13 know of any categories that would be privileged.

14 Q So is it -- it's your -- so you excluded
15 minutes of any executive sessions from
16 January, 2004, through the present from the
17 production?

18 A If there were any.

19 Q And which -- and what privilege do you
20 maintain protected the minutes of the executive
21 sessions?

22 A It's a state statute on the Open Meeting
23 Act and executive sessions.

24 Q Okay. So is confidentiality the privilege
25 you would say you would assert? Or is it an

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1 attorney work product or attorney/client
2 privilege?

3 A I haven't made those considerations or
4 determinations.

5 Q Okay. Okay. You just excluded it from
6 the production based on the state statute; is that
7 correct?

8 A Correct.

9 Q Okay. Let's move on to request
10 number 22. "Produce all documents related to any
11 communication with any representative of the
12 federal government or its agencies, including but
13 not limited to communications with regard to
14 Oklahoma's duties and/or obligations imposed by
15 federal law pertaining to resources, facilities,
16 operations or conditions in the Illinois River
17 watershed from 1980 to the present; B, any
18 recommendations pertaining to resources,
19 facilities, operations or conditions in the Illinois
20 River watershed from 1980 to the present; C, any
21 adverse impact on the environment or natural
22 resources from poultry or poultry-related
23 operations in the Illinois River watershed
24 from 1980 to the present; D, any adverse impact
25 on the environment or natural resources from

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1 Q Okay. Going back to A, where would that
2 -- that data be -- in which of these boxes or in
3 which files would the data or documentation
4 responsive to 22, subsection A be located?

5 A I don't recall that we specifically put
6 those in the sub request A, B, C, D, E and F,
7 connote generally those categories where
8 documents are pertaining to request 22.

9 Q So my understanding is you haven't broke
10 it out by subsection, but you can tell me the
11 location in total to request number 22, the general
12 location of documents responsive to everything
13 within request number 22; is that correct?

14 A Yes.

15 Q Okay. Can you tell me, then, where we
16 would find documents -- well, let me go down the
17 rest of the list then. Let me go back to C,
18 subsection C.

19 Did you locate any documents within the
20 possession of the Oklahoma Water Resources
21 Board responsive to request number 22,
22 subsection C?

23 A To the extent we have those, yes.

24 Q Is there some limitation on the extent
25 that the documents described in subsection C

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1 sources and activities other than poultry or
2 poultry-related operations in the Illinois River
3 watershed from 1980 to the present; E, any
4 coordination or interface with the State of
5 Arkansas and its political subdivisions, agencies
6 and commissions; and F, the above-styled
7 lawsuit."

8 Did I read that correctly?

9 A Yes.

10 Q Okay. Let's talk about A. We'll break
11 this one down and talk about each of these
12 subdivisions of this request.

13 Did you provide all documents and data
14 within the possession of the Oklahoma Water
15 Resources Board -- let me back up. Let me ask
16 you this question:

17 Did you find any documentation or data
18 within the possession of the Oklahoma Water
19 Resources Board related to request number 22,
20 subsection A?

21 A Yes.

22 Q Did you identify any data or
23 documentation responsive to request number 22,
24 subsection B?

25 A Yes.

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1 would be within the possession of the Oklahoma
2 Water Resources Board?

3 A The limitation about the destruction of
4 records, perhaps, from the 1980 date with the
5 Murrah Building bombing in 1995, other specific
6 schedules of records retentions may not have
7 specifically referred to this and may have been not
8 found in our current files at the agency.

9 Q Okay. And that's specifically related to
10 subsection C?

11 A I think.

12 Q Or is that -- those two limitations apply
13 to the entirety of request number 22?

14 A A, B and C use -- and D has the 1980
15 date.

16 Q Okay.

17 A But it would apply, I assume, to all
18 except F, which, obviously, did not exist at that
19 date.

20 Q Okay. So the two limitations on the
21 extent of the data produced apply to subsections
22 A, B, C, D and even potentially E with regards -- I
23 mean, and under request number 22, the
24 limitations on the destruction because of the date
25 of 1980 and the Murrah Building and schedules of

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1 record retention?

2 A Correct.

3 Q Okay. Looking at subsection D of request
4 number 22, did you find any documents or data
5 responsive to subsection D of request number 22?

6 A Yes.

7 Q With regards to subsection E of request
8 number 22, did you find any documents responsive
9 to subsection E?

10 A Yes.

11 Q And with regards to subsection F of
12 request number 22, did you find any documents
13 responsive to that section?

14 A Yes.

15 Q Absent the -- to -- actually, I think it's
16 like three caveats that you've provided to me,
17 generally. Is there -- have you provided all
18 documents within the possession of the Oklahoma
19 Water Resources Board that are -- that's
20 responsive to request number 22?

21 A Except for electronic documents and
22 potentially the lawsuit as privileged documents.

23 Q Okay. To your knowledge, did you assert
24 privilege over any other -- any documents within
25 the other categories, A, B, C, D or E?

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1 conjunction with the Oklahoma Attorney General's
2 office?

3 A Yes.

4 Q Can you tell -- did we already go through
5 -- no. I don't think I asked you where documents
6 responsive to request number 22 would be located.

7 A Probably most all the categories here.
8 Water quality, planning and management,
9 standards and office of general counsel.

10 Q And although you can't break it down by
11 specific request -- and I know that you're leery of
12 providing me boxes in that they -- that you -- can
13 you generally tell me what boxes within the water
14 quality division would contain information
15 responsive to request number 22?

16 A Perhaps water quality category three,
17 four, five, six, eight, nine, eleven, thirteen and
18 fourteen.

19 Q And in the P&M box? I guess there's only
20 two.

21 A Two. Number two.

22 Q Okay. And then in the boxes provided by
23 the office of general counsel?

24 A One, two, three, five, six, seven, eight,
25 nine, ten, eleven, twelve, fourteen, fifteen,

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1 A There may be, but I don't recall specific
2 documents.

3 Q Okay. Do you recall any specific
4 categories of documents that within -- that would
5 have fallen within the subsections A, B, C, D or E
6 of 20 -- request number 22?

7 A With respect to the state of Arkansas and
8 the Arkansas -- Oklahoma/Arkansas River
9 Compact Commission and communications with the
10 Oklahoma commissioners or the Attorney General's
11 office on that category, may be some -- a general
12 category of privilege.

13 Q Okay. With regards to electronic
14 documents, has a search been conducted -- a
15 search been conducted through electronic media
16 within the possession of the Oklahoma Water
17 Resources Board for documents responsive to
18 request number 22, including all subsections?

19 A No, not at this time.

20 Q Okay. Do you intend on conducting a
21 search through the electronic media within the
22 possession of the Oklahoma Water Resources
23 Board and then subsequently producing all
24 responsive data or documentation found in that
25 search pursuant to a court order and in

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1 sixteen, seventeen, eighteen and nineteen.

2 Q Okay. To your knowledge, would there be
3 any documents contained in either -- in the lakes
4 or streams and monitoring?

5 A I believe the streams.

6 Q Do you know any specific boxes in
7 streams that --

8 A Five and six and nine, it appears.

9 Q So other than the water quality division
10 boxes, the ones -- and I understand your caveat
11 about accuracy, that there may be in other boxes
12 that you haven't identified. The P&M box two and
13 the office general counsel and streams. Is there
14 any other division boxes that would have
15 information related to request number 22?

16 A To the extent water rights, groundwater
17 and stream water, or water well drilling and
18 licensing programs or financial assistance division
19 program files may mention one of these topics,
20 and included in there. There may be files,
21 documents within those division areas that are not
22 in this room --

23 Q Okay.

24 A -- will be made available for review.

25 Q Let's move on to request number 23. It

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1 states, "Produce all documents related to any
2 communication with any representative of the
3 State of Arkansas or its political subdivisions,
4 agencies and commission."

5 Did you identify any documents within
6 the possession of the Oklahoma Water Resources
7 Board responsive to request number 23?

8 A Yes.

9 Q Did you produce all documents which you
10 -- responsive to request number 23 within the
11 possession of the Oklahoma Water Resources
12 Board?

13 A Yes, except electronic documents and
14 perhaps privileged documents.

15 Q Okay. So did -- to your recollection, do
16 you recall identifying documents which may have
17 been responsive to request number 23, but which
18 you have asserted a privilege over?

19 A I don't recall specific ones, no.

20 Q What about categories of documents that
21 may be responsive to request number 23?

22 A Perhaps with the Arkansas --
23 Oklahoma/Arkansas River Compact Commission
24 and my role in communicating with the Oklahoma
25 commissioners or office of Attorney General.

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1 Q Okay. And with regards to electronic
2 documents, have you conducted a search through
3 the electronic medias within the possession of the
4 Oklahoma -- of the Oklahoma Water Resources
5 Board for documents responsive to request
6 number 23?

7 A No, not at this time.

8 Q Do you intend on conducting a search
9 through the electronic media within the
10 possession of the Oklahoma Water Resources
11 Board and subsequently producing all responsive
12 documents to request number 23 in accordance
13 with a court order and in conjunction with the
14 Attorney General's office?

15 A Yes.

16 Q Where would we -- where would
17 documents responsive to request number 23 be
18 located?

19 A Similar to 22, the water quality category,
20 the P&M, streams and office of general counsel.

21 Q Let me ask you a question. What type of
22 documents specifically with regards to number 23
23 would be -- would be identified or located in the
24 water quality general boxes?

25 A I'm sorry. What kind?

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1 Q Uh-huh. What types of documents?

2 A Most likely relevant to the Arkansas --
3 Oklahoma/Arkansas River Compact Commission
4 and communications with staffs of the state
5 agencies there.

6 Q Okay. And what about in the streams
7 boxes? What kind of data responsive to request
8 number 23 would be located there?

9 A The stream monitoring coordination with
10 the State of Arkansas agencies, perhaps.

11 Q And then the P&M file -- files, what type
12 of documents responsive to request number 23
13 would be located there?

14 A Similarly, monitoring, coordination with
15 the State of Arkansas agencies.

16 Q And then the office of general counsel,
17 what type of documents responsive to request
18 number 23 would be located there?

19 A Most likely those involving the Arkansas
20 -- Oklahoma/Arkansas River Compact Commission.

21 Q Any specific type of documents with
22 regards to the commission that would be located
23 in the office of the general counsel versus being
24 located in the other divisions of the Oklahoma
25 Water Resources Board?

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1 A Legal committee reports that are prepared
2 by the legal committee of that commission.

3 Q Okay. Let's move on to request
4 number 24, please. Request number 24 states,
5 "Produce any data and documents relating to any
6 impact on the environment or natural resources in
7 the Illinois River watershed from poultry or
8 poultry-related operations."

9 Did you identify any documents
10 responsive to request number 24 within the
11 possession of Oklahoma Water Resources Board?

12 A Yes.

13 Q Did you produce all documents and data
14 related to -- responsive to request number 24?

15 A Yes, except for electronic data and
16 perhaps any privileged documents.

17 Q Okay. And where would those documents
18 and data be located in the information provided?

19 A Water quality category, streams and
20 office of general counsel.

21 Q What type of data or documents would be
22 located in the water quality information provided?

23 A Perhaps those relating to a animal waste
24 task force activities.

25 Q And in the streams documents provided,

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1 what type of data or documents would be related
2 to request number 24?

3 A Monitoring data.

4 Q Monitoring of streams?

5 A Yes.

6 Q And in the office of general counsel, what
7 type of documents responsive to request
8 number 24 would be maintained in those boxes?

9 A Perhaps the animal waste task force and
10 any Arkansas -- Oklahoma/Arkansas River
11 Compact Commission report documents that
12 mention poultry or poultry-related operations.

13 Q With regards to electronic data, have you
14 conducted any search through the electronic
15 media within the possession of the Oklahoma
16 Water Resources Board for documents responsive
17 to request number 24?

18 A Not at this time.

19 Q Okay. Do you intend on conducting a
20 search through the electronic media of the
21 Oklahoma Water Resources Board for documents
22 responsive to request number 24 and then
23 subsequently producing those documents found to
24 be responsive in conjunction with a court order
25 and the Oklahoma Attorney General's office?

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1 A Except such documents as retained
2 electronically or privileged documents.

3 Q Okay. With regards to the electronic
4 documents, have you undertaken any search
5 through the electronic media within the
6 possession of the Oklahoma Water Resources
7 Board for data or documents responsive to request
8 number 25?

9 A Not at this time.

10 Q Do you intend on conducting a search for
11 documents and data responsive to request
12 number 25 through the electronic media within the
13 possession of the Oklahoma Water Resources
14 Board and then subsequently producing all
15 responsive documents in accordance to a court
16 order and in -- with the cooperation of the
17 Oklahoma Attorney General's office?

18 A Yes.

19 Q What kind of data responsive to request
20 number 25 would we find in the water quality
21 documents provided?

22 A General reports and monitoring
23 information.

24 Q And lakes, what type of documents --
25 documents provided by lakes, what type of

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1 A In cooperation with the Oklahoma
2 Attorney General's office, yes.

3 Q Did you identify any documents
4 responsive to request number 24 or data that you
5 believe a privilege should be asserted over?

6 A None specifically.

7 Q Okay. Do you remember any categories of
8 documents responsive to request number 24?

9 A None specifically.

10 Q Okay. Let's move on to request
11 number 25. It states, "Produce any data or
12 documents relating to any impact on the
13 environment or natural resources in Illinois River
14 watershed other than poultry or poultry-related
15 operations."

16 Did you find any documents responsive to
17 request number 25?

18 A Yes.

19 Q Where would those documents be located?

20 A Water quality category, lakes, streams
21 and office of general counsel.

22 Q Okay. Have you provided all data and
23 documents responsive to request number 25 within
24 the possession of the Oklahoma Water Resources
25 Board?

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1 documents would we find there that are responsive
2 to request number 25?

3 A Data and information probably from both
4 Lake Tenkiller and Lake Francis.

5 Q And with regards to the information
6 provided by streams, what types of documents or
7 data would we find responsive to request
8 number 25?

9 A Probably the same as lakes, except for
10 the Illinois River itself and other tributaries.

11 Q Okay.

12 A Sampling and monitoring information.

13 Q And in the office of the general counsel,
14 what type of documents would be located in those
15 provided that are responsive to request
16 number 25?

17 A Most likely the documents relative to the
18 Arkansas -- Oklahoma/Arkansas River Compact
19 Commission.

20 Q Did you identify any specific documents
21 or categories of documents responsive to request
22 number 25 which you assert -- which you believe a
23 privilege should be asserted over?

24 A I don't recall any specific documents.

25 Q Do you recall any categories of

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1 documents?

2 A I don't recall any categories of documents
3 either.

4 Q Okay. Let's move on to request
5 number 26, which states, "Produce all data and
6 documents related to any sand and/or gravel
7 mining operation and stream diversion or damming
8 activities within the Illinois River watershed."

9 Did you identify any documents
10 responsive to request number 26 within the
11 possession of the Oklahoma Water Resources
12 Board?

13 A Yes.

14 Q And where would those documents be
15 located in the documents provided?

16 A In the water quality general category,
17 streams and office of general counsel.

18 Q Okay. What types of documents would be
19 responsive to request number 26 would be located
20 in the water quality division boxes?

21 A Sampling and monitoring information.

22 Q Okay. And in the streams documentation
23 that's been provided, what kind of documents
24 would we find responsive to request number 26?

25 A Sampling and monitoring information.

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1 then subsequently producing them in accordance
2 with a court order and in coordination with the
3 Attorney General's office?

4 A Yes.

5 Q Did you identify any specific documents
6 or categories of documents responsive to request
7 number 26 which you believe a privilege should be
8 asserted over?

9 A Not that I can recall.

10 Q Let's move on to request number 27.

11 Request number 27 states, "Produce all data and
12 documents related to the generation, chemical
13 properties and/or disposition of poultry litter
14 within the Illinois River watershed."

15 Did you find any documents within the
16 possession of the Oklahoma Water Resources
17 Board responsive to request number 27?

18 A Yes.

19 Q Okay. And where would those documents
20 be located?

21 A The water quality category.

22 Q Okay. What type of documents would be
23 contained in those boxes responsive to request
24 number 27?

25 A There may be reports.

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1 Q Okay. And in the boxes of documents
2 provided by the Oklahoma general -- office of
3 general counsel. Is that right? What type of
4 documentation would we find related to request
5 number 26?

6 A Communications relative to a complaint
7 about sand or gravel mining operation. And
8 perhaps communications with the department of
9 mines, another state agency on the use of stream
10 water for mining.

11 Q Have you produced all documents and
12 data within the possession of the Oklahoma Water
13 Resources Board responsive to request number 26?

14 A Except electronic data and documents
15 and privileged documents.

16 Q Okay. As to the electronic documents,
17 have you undertaken a search of all electronic
18 media within the possession of the Oklahoma
19 Water Resources Board for documentation
20 responsive to request number 26?

21 A No, not at this time.

22 Q Do you intend on conducting a search of
23 the electronic media within the possession of the
24 Oklahoma Water Resources Board for data and
25 documents responsive to request number 26 and

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1 Q Have you produced all data and
2 documents responsive to request number 27 that
3 -- within the possession of the Oklahoma Water
4 Resources Board?

5 A Except electronic data and documents or
6 any privileged documents.

7 Q With regards to electronic data, have you
8 undertaken a search through the electronic media
9 within the possession of the Oklahoma Water
10 Resources Board for all documents responsive to
11 request number 27?

12 A No, not at this time.

13 Q Okay. Do you intend on conducting a
14 search through all electronic media within the
15 possession and used by the Oklahoma Water
16 Resources Board for documents responsive to
17 request number 27 and then subsequently
18 producing the same in accordance with a court
19 order and in coordination with the Oklahoma
20 Attorney General's office?

21 A Yes.

22 Q Is there any other division of -- of --
23 identified here in this room or -- or that we've
24 previously identified during your deposition where
25 any documents or data related to request

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1 number 27 would be located other than the water
2 quality boxes?

3 A Not that I'm aware of.

4 Q Request number 28 states, "Produce all
5 data and documents related to any complaint or
6 investigation into the operation of any
7 poultry-growing facility within the Illinois River
8 watershed."

9 Did you identify any documents
10 responsive to request number 28 within the
11 possession of the Oklahoma Water Resources
12 Board?

13 A No.

14 Q Did you undertake an investigation into
15 identifying whether or not any -- the Oklahoma
16 Water Resources Board had any documents
17 responsive to request number 28?

18 A Yes.

19 Q Can you explain to me the process by
20 which you investigated or looked or identified the
21 existence or nonexistence of any documents
22 related or responsive to request number 28?

23 A The employees who were asked to gather
24 all records relating to the Illinois River watershed
25 and a further review of all of those documents

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1 health and/or safety posed by any prior, current
2 or potential condition of the environment or
3 natural resources within the Illinois River
4 watershed."

5 Did you identify any documents
6 responsive to request number 29?

7 A Yes.

8 Q Okay. And where would those documents
9 be located?

10 A In the water quality category, streams
11 category and office of general counsel category.

12 Q What type of documentation responsive to
13 request number 29 would be located in the water
14 quality boxes?

15 A Probably reports.

16 Q Okay. Would the data to the extent it
17 exists in a physical format utilized or -- which
18 form the basis of those reports, would those be
19 also provided in the water quality boxes?

20 A To the extent those documents were
21 available and retained by the Oklahoma Water
22 Resources Board.

23 Q Okay. And in the streams boxes, what
24 type of documents would be maintained there
25 responsive to request number 29?

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1 with respect to a complaint or investigation into
2 the operation of any poultry-growing facilities,
3 and none were found.

4 Q Okay. Was the search limited to any
5 specific division, or was this -- was this same
6 search conducted by all the divisions within the
7 Oklahoma Water Resources Board?

8 A All of the divisions.

9 Q Okay. To your knowledge, was any search
10 of electronic media within the possession or
11 utilized by the Oklahoma Water Resources Board
12 conducted with regards to request number 28?

13 A No, not at this time.

14 Q Okay. Do you intend on conducting a
15 search through the electronic media within the
16 possession and utilized by the Oklahoma Water
17 Resources Board for documents or data responsive
18 to request number 28 and then subsequently
19 producing the same in accordance with a court
20 order and in cooperation with the Oklahoma
21 Attorney General's office?

22 A Yes.

23 Q Okay. Request number 29 states,
24 "Produce all -- any data and documents relating to
25 any prior, current or potential threat to human

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1 A Reports and any monitoring and sampling
2 program information.

3 Q Okay. As for sampling results, to the
4 extent they exist in a physical format, would they
5 be located in the streams box for any of these
6 reports?

7 A Yes.

8 Q And in the office of the general counsel,
9 what type of documents would be maintained
10 there?

11 A Probably copies of reports.

12 Q Would the office of the general counsel
13 maintain any data supporting those reports in
14 their files?

15 A Not usually. To the extent they are
16 attached to the report, it would be included.

17 Q Okay. Have you provided all
18 documentation and data responsive to request
19 number 29 to the extent it exists in the -- within
20 the possession of the Oklahoma Water Resources
21 Board?

22 A Yes, except for electronic data and any
23 privileged documents.

24 Q Have you undertaken a search through the
25 electronic media of the -- within the possession

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1 and utilized by the Oklahoma Water Resources
2 Board for data and documentation related and
3 responsive to request number 29?

4 A No, not at this time.

5 Q And do you intend on conducting a search
6 through the electronic media within the possession
7 of and utilized by the Oklahoma Water Resources
8 Board for documentation and data responsive to
9 request number 29 and then subsequently
10 producing the same in accordance with a court
11 order and the cooperation of the Attorney
12 General's office?

13 A Yes.

14 Q Let me ask you a question about the
15 electronic search. You indicated earlier -- and if
16 I'm wrong, please, correct me -- that you hadn't
17 yet been informed to go ahead and start that
18 search into the electronic media within the
19 possession of the Oklahoma Water Resources Board
20 with the exception, I think, of you said maybe
21 some E-mails. Do you -- do you know when you
22 intend on undertaking the search through that
23 electronic media for documents and data
24 responsive to the request posed by Peterson
25 Farms?

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1 A No.

2 Q Are you waiting for direction from the
3 Oklahoma Attorney General's office?

4 A Yes.

5 Q Once you receive that direction to
6 undertake the investigation into the electronic
7 files maintained by the Oklahoma Water Resources
8 Board, how long do you anticipate that search will
9 take?

10 A I cannot estimate, not being technical
11 with the computers, programs, databases. So I
12 can't guess.

13 Q So does the Oklahoma Water Resources
14 Board have an IT section that handles the -- these
15 databases, computers, servers and the like for the
16 Oklahoma Water Resources Board?

17 A Yes.

18 Q Is there one individual in particular that
19 would be the contact person for the IT department
20 with regards to these various databases and
21 servers and computers for the Oklahoma Water
22 Resources Board?

23 A Yes.

24 Q And who is that individual?

25 A David Hamilton is the manager of the

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1 department. His supervisor, Brian Vance, is over
2 that section.

3 Q Is it your belief that one of these
4 individuals might be able to answer that question
5 about how long it would take once you receive the
6 direction to obtain the material that -- or
7 responsive documentation within the electronic
8 files within the possession of the Oklahoma Water
9 Resources Board?

10 A With information provided from all
11 employees that may have those -- that information,
12 electronic information, one of those individuals
13 should be able to estimate after receiving that
14 information.

15 Q Okay. Would one -- would it be fair to
16 say that one of these individuals or maybe -- or
17 maybe both would be able to explain the various
18 systems used by the Oklahoma Water Resources
19 Board to maintain databases and E-mail servers
20 and the like?

21 A Yes.

22 Q Did you -- did you identify any categories
23 of documents or data or specific data or documents
24 responsive to request number 29, but -- for which
25 you believe a privilege should be asserted?

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1 A I cannot recall any specific documents.

2 Q And what -- with regards to categories,
3 can you recall any categories of documents that
4 you identified a privilege should be asserted over?

5 A No, I cannot recall.

6 Q Okay. Let's look at request number 30.
7 It states, "Produce all documents related to the
8 management, handling, treatment and/or disposal
9 of solid waste within the Illinois River watershed
10 from 1980 to the present."

11 Did you produce any documents
12 responsive to request number 30?

13 A Yes.

14 Q And where would those be located?

15 A Office of general counsel.

16 Q Would there be any documents located in
17 the water quality division with regards to request
18 number 30?

19 A I don't recall any specific documents.

20 Q Okay. What about lakes or streams and
21 monitoring?

22 A None specific that I recall.

23 Q Okay. So is it your testimony that you
24 believe the only documents responsive to request
25 number 30 within the possession of the Oklahoma

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1 Water Resources Board are located in the boxes --
2 the Oklahoma -- I mean, the office of general
3 counsel boxes?

4 A Yes.

5 Q Okay. Have you produced all documents
6 responsive to request number 30?

7 A Except for electronic documents or
8 privileged documents, yes.

9 Q What types of documents responsive to
10 request number 30 would be maintained in the
11 office of general counsel documents provided?

12 A Perhaps a report to the Arkansas --
13 Oklahoma/Arkansas River Compact Commission
14 about disposal of solid waste.

15 Q Any communication other than a report?

16 A Not that I can recall specifically.

17 Q Okay. Have you undertaken a search
18 through the electronic media within the possession
19 of the Oklahoma -- and utilized by the Oklahoma
20 Water Resources Board to identify documents
21 responsive to request number 30?

22 A No, not at this time.

23 Q Okay. Do you intend on undertaking a
24 search through the electronic media within the
25 possession of and utilized by the Oklahoma Water

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1 A Yes.

2 Q Okay. Where would those be located, sir?

3 A In the water quality category.

4 Q Okay. Any specific boxes within the water
5 quality category that may contain data or
6 documents responsive to request number 31?

7 A Box one and box six.

8 Q Okay. What type of documentation would
9 be contained in the water quality boxes responsive
10 to request number 31?

11 A Most likely a report.

12 Q Do you know if the backup data for that
13 report has been provided, as well?

14 A If it was part of the report or attached to
15 it, yes.

16 Q Okay. And if it wasn't attached to it or
17 part of it, is there another division that would
18 have that data to the extent that it exists?

19 A No.

20 Q So if data exists that backs up that report
21 that's not attached or part of it, would it also be
22 contained in the water quality boxes?

23 A It may not if it's a copy of a report from
24 another agency.

25 Q Okay. To your knowledge, did you

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1 Resources Board for documents responsive to
2 request number 30 and then subsequently
3 producing the same in accordance with the court
4 order and cooperation of the Attorney General's
5 office?

6 A Yes.

7 Q Are there any specific boxes within the
8 Oklahoma -- office of general counsel where
9 documents responsive to request number 30 would
10 be located?

11 A Perhaps number 17.

12 Q Did you identify any specific documents
13 or categories of documents responsive to request
14 number 30 for which you believe a privilege should
15 be asserted over?

16 A I don't recall any.

17 Q Let's move on to request number 31.

18 Request number 31 states, "Produce any data or
19 documents that relate to or identify any condition
20 within the Illinois River which presents or may
21 present an imminent and substantial
22 endangerment to health or the environment."

23 Did you identify any documents within the
24 possession of the Oklahoma Water Resources Board
25 responsive to request number 31?

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1 identify any reports created by the Oklahoma
2 Water Resources Board that specifically deal with
3 whether or not any conditions exist within the
4 Illinois River watershed which present an
5 imminent and substantial endangerment to health
6 or the environment?

7 A I don't recall any specific documents or
8 reports.

9 Q Okay. Have you produced all documents
10 and data responsive to request number 31 within
11 the possession of the Oklahoma Water Resources
12 Board?

13 A Yes, except for electronic data or
14 privileged documents.

15 Q Have you undertaken a search through the
16 electronic media within the possession of the
17 Oklahoma Water Resources Board or utilized by
18 the Oklahoma Water Resources Board for
19 information responsive to request number 31?

20 A No, not at this time.

21 Q Okay. Do you intend on conducting a
22 search through the electronic media within the
23 possession of and utilized by the Oklahoma Water
24 Resources Board for documents responsive to
25 request number 31 and then subsequently produce

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1 the same in accordance with the court order and
2 with cooperation of the Oklahoma Attorney
3 General's office?

4 A Yes.

5 Q Did you identify any documents
6 responsive to request number 31 for which you
7 believe a privilege should be asserted over?

8 A No, none specifically.

9 Q Did you identify any categories of
10 documents responsive to request number 31 for
11 which you believe a privilege should be asserted
12 over?

13 A No.

14 MS. GENTRY: And, Nicole, are we at a
15 stopping point for a stretch break?

16 MS. LONGWELL: Sure.

17 (A recess was taken from 2:03 to 2:29
18 PM.)

19 Q (BY MS. LONGWELL) I believe that we left
20 off at -- we just finished request number 31 and
21 we're on request number 32. Is that your
22 recollection of where we left off?

23 MS. GENTRY: Yes.

24 THE WITNESS: Yes.

25 Q (BY MS. LONGWELL) Okay. Request

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1 information responsive to request number 32?

2 A Yes.

3 Q And what boxes are those?

4 A Seventeen.

5 Q Okay. And did you produce all documents
6 responsive to request number 32?

7 A Yes, except for electronic documents or
8 documents for which a privilege is claimed.

9 Q Okay. As to electronic documents, have
10 you undertaken a search through the electronic
11 media within the possession or utilized by the
12 Oklahoma Water Resources Board for documents
13 responsive to request number 32?

14 A No, not at this time.

15 Q Okay. Do you intend on undertaking a
16 search through the electronic media within the
17 possession of the Oklahoma Water Resources Board
18 or utilized by the Oklahoma Water Resources
19 Board for documents responsive to request
20 number 32?

21 A Yes, with -- in conjunction with the court
22 order and in cooperation with the Attorney
23 General's office.

24 Q Do you intend on producing any
25 documents responsive to request number 32

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1 number 32 states, "Produce all documents related
2 to the dispute between the State of Oklahoma and
3 its Attorney General and members of the poultry
4 industry, including but not limited to the above
5 styled lawsuit, whether created before or after the
6 filing of the lawsuit on June 13th, 2005."

7 Did you identify any documents
8 responsive to request number 32?

9 A Yes.

10 Q Did you produce any documents
11 responsive to request number 32?

12 A Yes.

13 Q Okay. And where would those documents
14 be located?

15 A In the water quality general and office of
16 general counsel.

17 Q Okay. Are there any specific -- specific
18 boxes under the water quality division that we may
19 -- that may contain information responsive to
20 request number 32?

21 A Yes.

22 Q And what boxes are those?

23 A One, six and eleven.

24 Q Okay. And under the office of general
25 counsel, are there any boxes which may contain

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1 located through the electronic media files within
2 the possession of the Oklahoma Water Resources
3 Board and -- in accordance with a court order and
4 with cooperation of the Oklahoma Attorney
5 General's office?

6 A Yes.

7 Q What type of documents responsive to
8 request number 32 would I -- would generally be
9 found in the water quality boxes?

10 A Reports most likely.

11 Q Okay. Any specific type of report?

12 A Probably reports from other agencies.

13 Q Okay. And in the office of general
14 counsel, what type of documents would we find in
15 -- boxed under number 17, responsive to request
16 number 32?

17 A Similarly, reports and then litigation
18 confidential information.

19 Q And just so I'm clear -- and this is
20 probably a question to your counsel instead for
21 just a second, Trevor, Sharon.

22 If I recall correctly, you've indicated to
23 me that you're going to provide me an index of
24 what's in each of these boxes similarly to the way
25 you did with ODEQ?

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MR. HAMMONS: It's similar to ODEQ where we have tried to identify your request and other defendants' requests and/or interrogatories with the caveat that there may be responsive information contained throughout these productions. But to the extent that we've identified them, we have done so for you.

MS. LONGWELL: And I think in ODEQ we received an index of what files were maintained in a particular box. Do we have something similar to that, as well?

MR. HAMMONS: No, ma'am, you do not. DEQ is -- I don't know of where, but they had a central records and a file keeping. And as Mr. Couch has indicated, there is no central records system. So it's each individual's office, many pieces of paper. They will generally -- we don't have an index of every single piece of paper that's in the boxes because there are numerous different types of reports and correspondence or whatever in each different box. It's a cornucopia of different types of information.

Q (BY MS. LONGWELL) Okay. So, Mr. Couch, if I were to ask you what's contained -- what are the contents of the box 17 of the office of

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wildlife from 1980 to the present."

Did you find any documents responsive to request number 33 within the possession of the Oklahoma Water Resources Board?

A Yes.

Q Where would those documents be located in the documents provided?

A In the water quality general, lakes, planning and management and office of general counsel.

Q Okay. Any specific box -- any specific boxes within the water quality division?

A Yes. Three, six, nine, eleven, thirteen.

Q Okay. What type of documents would be maintained in those boxes?

A Reports and sampling and monitoring information.

Q Okay. And is there any specific lakes box that would contain information responsive?

A It's -- I think it's just the one box, yes.

Q Oh, okay. All right. And what type -- what type of documents would typically -- I'm sorry. Strike that.

What type of documents are located in that box responsive to request number 33?

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general counsel, would you be able to provide to me what's contained in that box? What files are contained in that box?

A I don't have an index of that box.

Q Okay. Okay. Did you identify any documents responsive to request number 32 for which you claim a privilege should be asserted?

A I don't recall specific documents, no.

Q Do you recall any categories of documents that you claim are -- a privilege should be asserted over that are responsive to request number 32?

A With respect to the litigation --

Q Yes.

A -- and lawsuit and communications with the Attorney General's office and to the extent there may have been documents with the Arkansas -- Oklahoma/Arkansas River Compact Commission, Oklahoma commissioners and the Attorney General's office, those would be some categories.

Q Okay. Let's move on to request number 33, Mr. Couch. Request number 33 states, "Produce all data and documents related to any census of animals within the Illinois River watershed, including livestock, poultry and

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A Reports.

Q And any specific planning and management -- is there only one specific planning and management box or is there two?

A Two.

Q Is there any specific planning and management box that would contain information responsive to request number 33?

A Both.

Q What type of documentation would that be?

A Reports.

Q What type of reports?

A I assume that reference in some manner census of animals within the Illinois River watershed.

Q And in the office of general counsel, is there any specific box which may contain information responsive to request number 33?

A Yes.

Q Which boxes?

A Fifteen.

Q And what type of documents or data would be contained in that -- in box fifteen responsive to request number 33?

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1 A Copies of reports.

2 Q Do you know, these reports that you've
3 indicated are maintained in these boxes, if any of
4 the backup data for those reports have been
5 provided?

6 A I'm not aware of -- if they were reports
7 prepared by the Oklahoma Water Resources Board,
8 the backup data, I assume, would be included.
9 But most likely those are reports from other
10 agencies.

11 Q In your -- in your direction to the
12 divisions for these requests for production of
13 documents, did you specifically indicate to those
14 divisions that if there was a report, investigation,
15 study or the like, that the backup data, to the
16 extent it exists, should be produced, along with
17 that report, investigation, study or --

18 A That broad-based request was included,
19 that any records, documents or data be included if
20 it had anything to do with the Illinois River
21 watershed.

22 Q Okay. Did you produce all documents and
23 data responsive to request number 33 within the
24 possession of the Oklahoma Water Resources
25 Board?

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1 A Yes, except the electronic data and
2 documents and any privileged documents.

3 Q Okay. With regards to electronic data,
4 did you undertake an investigation or -- into -- or
5 a search of the electronic media files within the
6 possession or utilized by the Oklahoma Water
7 Resources Board for documents or data responsive
8 to request number 33?

9 A No, not at this time.

10 Q Okay. Do you intend on undertaking a
11 search of all the electronic media within the
12 possession or utilized by the Oklahoma Water
13 Resources Board for data responsive to request
14 number 33 and then subsequently producing the
15 same in accordance with a court order and in
16 cooperation with the Oklahoma Attorney General's
17 office?

18 A Yes.

19 Q Did you identify any data or documents
20 responsive to request number 33 for which you
21 believe a privilege should be asserted over?

22 A I do not recall any.

23 Q Moving to request number 34, which
24 states, "Produce all documents related to any
25 communication by representatives of the Oklahoma

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1 Water Resources Board relating to the condition
2 and potential influences upon the environment and
3 natural resources in the Illinois River watershed,
4 sources of pollution or degradation of the
5 environment or natural resources in the Illinois
6 River watershed, potential remedies and/or action
7 steps to address any pollution or degradation of
8 the environment or natural resources in the
9 Illinois River watershed, potential or actual
10 legislative or governmental actions to address
11 operations and/or conditions in the Illinois River
12 watershed, the development and promulgation of
13 the TMDLs for any waters in the Illinois River
14 watershed and the dispute with certain members of
15 the poultry industry, including this lawsuit, with
16 any of the following: Subsection A, any
17 representative or employee of any other agency or
18 subdivision of Oklahoma's government; subsection
19 B, any representative or employee of any
20 university or public or private research institute;
21 C -- subsection C, any contract or consultant;
22 and, subsection D, any other employee or
23 representative of the Oklahoma Water Resources
24 Board."

25 Did you identify any documents

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1 responsive to request number 34?

2 A Yes.

3 Q And where would those documents be
4 located?

5 A In the water quality general category,
6 lakes, streams and office of general counsel.

7 Q Did you identify any documents within the
8 water quality standards responsive to request
9 number 34?

10 A Yes.

11 Q As to those boxes, could you identify any
12 specific boxes under the water quality general
13 category which may contain documents responsive
14 to request number 34?

15 A Yes. One, three, five, six, eight, ten and
16 fourteen.

17 Q And in the lakes, there's only one box.

18 A Correct.

19 Q In the streams, which boxes may contain
20 information responsive to request number 34?

21 A I misspoke. That was standards.

22 Q Okay.

23 A Two, four, five and seven.

24 Q Okay. So in the two, four -- boxes two,
25 four, five, seven of the water quality standards --

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1 A Correct.

2 Q -- may contain information responsive to
3 request number 34?

4 A Correct.

5 Q Are there any documents within the --
6 documents provided under streams and monitoring
7 which are responsive to request number 34?

8 A Not that I can recall.

9 Q Okay. And as to the office of general
10 counsel, are there any boxes which may contain
11 information responsive to request number 34?

12 A Yes.

13 Q And which box is that?

14 A Four and seventeen.

15 Q Okay. As to those boxes identified as may
16 -- maybe containing documents responsive to
17 request number 34 under water quality general,
18 what type of information would be maintained
19 there or would we find there?

20 A With the broad question, I can't identify
21 specific types of information at this time without
22 looking through those.

23 Q Let's look at that, then. Let's look at
24 communications by representatives of the
25 Oklahoma Water Resources Board relating to the

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1 resources in the Illinois River watershed."

2 Can you identify what types of documents
3 may be located in the water quality general files
4 related to that specific portion of request
5 number 34?

6 A Perhaps reports.

7 Q Okay. Would there be information
8 responsive to that specific portion of request
9 number 34 in the lakes box?

10 A I don't know about that specific portion of
11 the request.

12 Q Okay. What about in the office of general
13 counsel, the two boxes identified?

14 A I don't know of specific documents in
15 those boxes for that portion of the request.

16 Q Okay. What about the water quality
17 standards boxes for that portion of the request?
18 Do you -- do you know what types of documents
19 may be contained in those boxes?

20 A Types of documents for water quality
21 standards?

22 Q Right. For the sources of pollution or
23 degradation of the environment or natural
24 resources in the Illinois River watershed.

25 A Reports, perhaps sampling and monitoring

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1 condition and potential influences upon the
2 environment and natural resources in the Illinois
3 River watershed. Would any of the boxes that
4 you've identified under the water quality general
5 contain information regarding that?

6 A Yes.

7 Q Do you know which specific boxes may
8 contain that information?

9 A Not specifically.

10 Q Okay. Do you know what type of
11 documentation may be contained in those
12 documents which is responsive to that specific
13 portion of request number 34?

14 A No.

15 Q How about with regards to the two boxes
16 identified under the office of general counsel?

17 A No, I can't recall specific documents.

18 Q Okay. And with regards to the water
19 quality division standards, did you identify any
20 documents responsive to that portion of request
21 number 34 in those boxes you identified under
22 water quality division standard?

23 A No.

24 Q The request says, "Sources of pollution or
25 degradation of the environment or natural

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1 information.

2 Q Okay. What about section -- request
3 number 34, potential remedies and/or action steps
4 to address any pollution or degradation of the
5 environment or natural resources in the Illinois
6 River watershed? Would there be documents
7 responsive to that portion of request number 34 in
8 the water quality general?

9 A There may be.

10 Q Do you know what types of documents
11 would be maintained there regarding this specific
12 portion of request number 34?

13 A Reports, if there are documents in there.

14 Q Okay. And what about with regards to
15 water quality standards? Would there be any
16 documents responsive to this portion of the
17 request contained in those boxes?

18 A Not that I recall.

19 Q Okay. What about in the office of general
20 counsel?

21 A Not that I recall.

22 Q And the lakes box?

23 A I don't recall specific documents for that
24 portion of the request.

25 Q Okay. What about potential or actual

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1 legislative or governmental actions to address
2 operations and/or conditions in the Illinois River
3 watershed? Would there be any documents
4 responsive to that portion of request number 34 in
5 the water quality general files provided?

6 A There may be.

7 Q What type of documents may be
8 responsive that would be contained in those files?

9 A Perhaps draft legislation or draft rules
10 from other agencies.

11 Q Okay. Would there be any of that --
12 anything responsive to that portion of request
13 number 34 in the lakes box?

14 A I'm not aware of any.

15 Q How about in the Office of Attorney
16 General -- I'm sorry. Office of general counsel,
17 would there be anything responsive to that portion
18 of request number 34 in those boxes?

19 A There may be copies of a draft or enacted
20 legislation or rules.

21 Q Okay. Of the OWRB or other agencies?

22 A Most likely other agencies.

23 Q Okay. What about in the water quality
24 standards boxes? Would there be anything
25 responsive to this portion of the request in that --

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1 Q Do you know if there's any reports that
2 have been created by the Oklahoma Water
3 Resources Board with regards to the TMDL for any
4 waters in the Illinois River watershed?

5 A To the extent water quality standards,
6 under a federal law, my understanding relates to
7 TMDLs, that could be characterized as part of the
8 water quality standards activities.

9 Q Okay. And the office of general counsel,
10 would there be any documents responsive to that
11 portion of request number 34 regarding TMDLs for
12 any waters in the Illinois River watershed?

13 A I'm not aware of any.

14 Q Would there be any documentation within
15 the water quality general files for -- regarding the
16 dispute with certain members of the poultry
17 industry including this lawsuit?

18 A I'm not aware of any specific documents.

19 Q What about in the office of general
20 counsel?

21 A I'm not aware of any specific documents.

22 Q What about categories of documents? Are
23 you aware of any categories of documents?

24 A To the extent the litigation deals with the
25 poultry industry, and there may be

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1 in those boxes?

2 A Water quality standards are -- might be
3 characterized as governmental actions to address
4 conditions.

5 Q Okay.

6 A And, therefore, all of the draft documents
7 and the promulgated documents that are the water
8 quality standards.

9 Q Okay. The development and promulgation
10 of the TMDLs for any waters in the Illinois River
11 watershed, would any documentation responsive to
12 that portion of request number 34 be maintained
13 in the water quality general files?

14 A There may be.

15 Q What type of documentation would that
16 include?

17 A Reports that reference that activity.

18 Q Okay. And in the water quality standards
19 files, would there be anything responsive to that
20 portion of request number 34?

21 A There may be.

22 Q What type of documentation would that
23 be?

24 A Reports from other agencies that
25 reference the TMDLs.

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1 communications with the Attorney General's office
2 or from the office of general counsel to staff about
3 the litigation that deals with the poultry industry,
4 there may be privileged documents.

5 Q Okay. And the water quality standards,
6 would there be any documents responsive to this
7 portion of the request number 34?

8 A To the extent there may have been
9 comments submitted by individual -- individuals
10 that deal with the poultry industry or from the
11 poultry industry representatives themselves as
12 comments to proposed water quality standards,
13 there may be.

14 Q Okay. Have you provided all documents
15 within the possession of the Oklahoma Water
16 Resources Board in response to 34 -- request
17 number 34?

18 A Yes, except for electronic documents or
19 documents for which a privilege is claimed.

20 Q Okay. As to the electronic documents,
21 have you undertaken any search of the electronic
22 media within the possession or utilized by the
23 Oklahoma Water Resources Board for documents
24 responsive to request number 34?

25 A No, not at this time.

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Q Okay. Do you intend on undertaking a search of all electronic media within the possession of or utilized by the Oklahoma Water Resources Board for documents responsive to request number 34 and then subsequently produce the same in accordance with a court order and with the cooperation of the Oklahoma Attorney General's office?

A Yes.

Q Did you identify any documents which you believe -- responsive to request number 34 which you believe a privilege should be asserted over?

A Perhaps as discussed previously.

Q Okay. And when you says "perhaps as discussed," you're talking about the litigation with the poultry industry, communications with the Oklahoma Attorney General's office or perhaps communications of the general counsel of the Oklahoma Water Resources Board and employees of the Oklahoma Water Resources Board regarding the litigation?

A Yes, or these other items for which an attorney/client privilege -- a privileged communication was made.

Q Okay. And when you reference that,

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A Correct.

Q Have you identified any boxes specifically under water quality general which may contain information responsive to request number 35?

A Yes.

Q And which boxes are those?

A One, three, five, six, fourteen.

Q What types of documents would generally be contained in these water -- or which types of documents would be contained in the files provided under water quality general or -- that are responsive to request number 35?

A Reports.

Q Reports conducted by the Oklahoma Water Resources Board?

A There may be some reports that can be characterized like that.

Q Okay. What about reports -- are there any reports from any other agencies within those files?

A There may be.

Q What type of -- did you identify any boxes under the water quality standards files that have been provided that may contain information responsive to request number 35?

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would you maybe possibly be referencing the Arkansas commission and your relationship as counsel for the Oklahoma commissioners for the Arkansas/Oklahoma Compact Commission?

A To the extent these items under the request number 34 would be involved or raised in -- in those documents, yes.

Q Okay. Is there any other category that we haven't covered for which you believe the privilege should be asserted over documents which you have identified as responsive to request number 34?

A Not that I'm specifically aware of.

Q Moving on to request number 35. States, "Produce all data and documents related to the quantity and quality of the fishery in the Illinois River watershed."

Did you identify any documents within the possession of the Oklahoma Water Resources Board which are responsive to request number 35?

A Yes.

Q And where would those documents be located?

A In the water quality and standards.

Q So water quality general and water quality standards?

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A Yes.

Q Which boxes are those, sir?

A Eight and nine.

Q What type of documentation would those boxes -- may those boxes -- what type of -- strike that.

What kind -- what type of data or documents would be contained in these water quality standards boxes?

A Reports and other documents relating to the beneficial use designations, criteria or anti-degradation policy that makes up the Oklahoma water quality standards for which standards promulgation activities take place where fisheries may be a matter of -- the subject matter.

Q Have you produced all documents and data responsive to request number 35 within the possession of the Oklahoma Water Resources Board?

A Yes, except electronic data and documents or privileged documents.

Q Have you undertaken a search of the electronic media within the possession of the Oklahoma Water Resources Board or utilized by the Oklahoma Water Resources Board for

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documents and data responsive to request number 35?

A No, not at this time.

Q Have you -- do you intend on undertaking a search of the electronic media utilized by and within the possession of the Oklahoma Water Resources Board for documents responsive to request number 35 and then subsequently produce the same in accordance with a court order and coordination with the Attorney General's office?

A Yes.

Q Did you identify any documents or data which you believe a privilege should be asserted over that are responsive to request number 35?

A None specifically.

Q So the only two areas -- or two general sections of boxes that have been provided that you believe would contain information responsive to request number 35 are the water quality general boxes and water quality standard boxes?

A Correct.

Q Let's move on to request number 36. Request number 36 states, "Produce all data and documents related to the impact upon the lands and waters of the Illinois River watershed from

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A Perhaps, generally, reports from other agencies or individuals.

Q Do you know if there's any reports prepared by the Oklahoma Water Resources Board that may be responsive to request number 36?

A I don't recall that there is any.

Q Okay. Did you identify any boxes provided from the office of general counsel which may contain information responsive to request number 36?

A Yes.

Q Which boxes?

A Number seventeen.

Q And what type of documentation or what type of data would be contained in the box from the Oklahoma -- office of general counsel responsive to request number 36?

A Most likely reports.

Q Reports prepared by the -- the OW -- by the Oklahoma Water Resources Board or by other agencies?

A Prepared by other agencies or individuals, perhaps.

Q Okay. Are these the same reports that are contained in the water quality general files?

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recreational users, including but not limited to sightseers, campers, floaters, fishermen, picnickers and hunters."

Did you find any documents responsive to request number 36?

A Yes.

Q Where would those documents be located?

A In water quality standards general and office of general counsel.

Q Water quality standards and water quality general?

A I'm sorry. Water quality general.

Q Okay. And then office of --

A General counsel.

Q -- general counsel; okay.

Did you identify any specific boxes under the water quality general boxes provided which may contain information responsive to request number 36?

A Yes.

Q Which boxes?

A Number one and six.

Q Okay. What type of documents responsive to request number 36 might be found in boxes one and six in the water quality general files?

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A There may be duplicates, yes.

Q Okay. Is it possible that the water quality general files may contain reports that are not contained in the office of general counsel and vice versa?

A It is possible.

Q Have you produced all documents and data within the possession of Oklahoma Water Resources Board responsive to request number 36?

A Yes, except for electronic data and documents or any data or documents for which a privilege may be claimed.

Q Have you undertaken a search of the electronic media within the possession of the Oklahoma Water Resources Board or utilized by the Oklahoma Water Resources Board for documents responsive to request number 36?

A No, not at this time.

Q Okay. Do you intend on conducting or searching through the electronic media within the possession of or utilized by the Oklahoma Water Resources Board for documents responsive to request number 36 and then subsequently produce the same in accordance with a court order and with the cooperation of the Oklahoma Attorney

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1 General's office?

2 A Yes.

3 Q Did you identify any documents which
4 were responsive to request number 36 for which
5 you believe a privilege should be asserted over?

6 A None specifically that I can recall.

7 Q Do you recall any categories of documents
8 for which you believe are responsive to request
9 number 36 for which a privilege should be asserted
10 over?

11 A I don't recall any categories.

12 Q Let's move on to request number 37.
13 Request number 37 states, "Produce all data and
14 documents related to rest room facilities and/or
15 the lack thereof located in the vicinity of the
16 Illinois River and its tributaries to serve
17 recreational users."

18 Did you identify any documents within the
19 possession of the Oklahoma Water Resources Board
20 responsive to request number 37?

21 A No.

22 Q Tell me what -- what process you used to
23 search the records of the Oklahoma Water
24 Resources Board for documents responsive to
25 request number 37.

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1 person -- personal files within their own office for
2 documents responsive to these requests?

3 A Yes.

4 Q Did you ask them to search any general
5 files maintained by the division for documents
6 responsive to these requests?

7 A Yes.

8 Q Did you ask these individuals to
9 undertake a search of the electronic media within
10 their division to locate documents which may be
11 responsive to this request?

12 A No, we have not.

13 Q Do you intend on conducting a search
14 through the -- through all the electronic media
15 maintained and utilized by the Oklahoma Water
16 Resources Board for documents responsive to
17 request number 37?

18 A Yes.

19 Q Will you produce all documents and data
20 identified in electronic format to Peterson Farms
21 pursuant to a court order and in cooperation with
22 the Oklahoma Attorney General's office?

23 A Yes.

24 Q Do you know if any documents --
25 Oklahoma Water Resources Board documents are

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1 A A Request was made to all of the divisions
2 that may have documents or data or have activities
3 in the Illinois River and its tributary areas. And a
4 copy of the request was provided and general
5 direction and instruction given to provide any
6 information related to the Illinois River watershed,
7 which would include documents related to rest
8 room facilities or the lack thereof.

9 Q Can you tell me -- let's use, for example,
10 the water quality general files or the water quality
11 division, how they went about searching their files
12 for documents responsive, let's say, specifically to
13 request number 37? Do they have -- are they
14 going by memory, or are they looking through an
15 electronic record of their own that they keep
16 within that division?

17 A It may be a combination.

18 Q Did you ask them to provide you any kind
19 of detailed report regarding the investigations they
20 undertook to locate documents responsive to these
21 requests?

22 A No, not a detailed report.

23 Q And in your instructions to the
24 individuals who assisted you in gathering these
25 documents, did you ask them to search their

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1 maintained off-site?

2 A Not to my knowledge.

3 Q So to your knowledge, all documents
4 created by the Oklahoma Water Resources Board
5 that exist in physical format are located here in
6 this building?

7 A Yes.

8 Q Does the Oklahoma Water Resources
9 Board have any, like, extension offices in any
10 other part of the state?

11 A We have field offices; correct.

12 Q Is there any field offices within the
13 Illinois River watershed?

14 A No.

15 Q Okay. Is there any other field office
16 which would have, for lack of a better word,
17 jurisdiction over the Illinois River watershed?

18 A The northeast counties are within the
19 Tulsa field office area for whatever activities those
20 field offices conduct.

21 Q What type of activities, to your
22 knowledge, does the Tulsa field office conduct?

23 A Flood plain management and other
24 complaint investigations for water well drillers,
25 water well drillers licensing, water use. Those

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1 general activities.

2 Q Do they maintain files separate and
3 distinct from those files maintained here at the
4 main office of the Oklahoma Water Resources
5 Board?

6 A Not to my knowledge. There may be
7 incidental notes or other copies of reports for
8 public review that are maintained at those offices.
9 But, in general, they do not. They forward those
10 to the Oklahoma City office.

11 Q Okay. Do you know whether or not any
12 efforts were made to search the records maintained
13 by the north -- the Tulsa field office for documents
14 and data responsive to the requests propounded by
15 Peterson Farms?

16 A Not to my knowledge. Not a specific
17 request; but the information, generally, was given
18 to the planning management division for which
19 that one field office employee works, with the
20 general discussion about the litigation and the
21 need to maintain or retain all records with that
22 field office employee. I believe attending a staff
23 meeting in which that particular subject was
24 discussed.

25 Q So do -- are you -- are you indicating that

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1 inception to -- to the present."

2 Did you provide -- or did you identify any
3 documents responsive to request number 38?

4 A Yes.

5 Q Have all the documents and data within
6 the possession of the Oklahoma Water Resources
7 Board responsive to request number 38 been
8 provided?

9 A Yes, except electronic data and documents
10 or data and documents for which a privilege is
11 claimed.

12 Q And where would the documents
13 responsive to request number 38 be located in
14 those items provided or reviewed?

15 A In the water quality general, the streams
16 and monitoring, the movable files in the water
17 quality programs division and in the P&M boxes.

18 Q Are there any specific boxes within the
19 water quality general files that have been provided
20 which may contain information responsive to
21 request number 38?

22 A Yes.

23 Q What boxes are those, sir?

24 A Five, six, eleven and twelve.

25 Q What types of documents would generally

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1 you believe that the field -- I mean, the planning
2 and management division communicated with the
3 individual at the Tulsa field office regarding these
4 requests?

5 A Yes. And in addition, a staff meeting,
6 generally, where the information was provided.

7 Q Okay. So you have personal knowledge
8 that this person was informed of these requests?

9 A I do not recall specifically if that person
10 attended the staff meeting, or I do not have
11 information about a specific contact with, by
12 E-mail or otherwise, personal communication, with
13 that employee.

14 Q So it's your assumption that that
15 occurred, though? That there was some
16 communication with the Tulsa field office about
17 records that may be within their possession?

18 A Yes.

19 Q Okay. What is the name of the individual
20 at the Tulsa field office?

21 A Gavin Brady.

22 Q Let's move on to request number 38.
23 States, "Produce all data and documents related to
24 the beneficial use monitoring program as it relates
25 to waters within the Illinois River watershed from

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1 be contained in those boxes that are responsive to
2 request number 38?

3 A In water quality general, a discussion of
4 the program, perhaps a copy of the beneficial use
5 monitoring program annual report, other internal
6 documents relating to the operations personnel
7 and the activities associated with that program.

8 Q Okay. And in the -- are there any specific
9 boxes in the streams and monitoring where
10 documents responsive to request number 38 may
11 be located?

12 A Yes.

13 Q And which boxes are those?

14 A One, three and four.

15 Q What types of documents may be
16 contained in those boxes that are responsive to
17 request number 38?

18 A The actual monitoring activities, logs, lab
19 sheets and reports for all the monitoring at the
20 various sites within the Illinois River watershed.
21 Likewise, perhaps copies of beneficial use
22 monitoring program annual report specifically
23 relating to the Illinois River watershed.

24 Q Okay. Is any of that same data
25 maintained electronically, to your knowledge?

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1 A Yes.

2 Q Has any data that's electronic been
3 printed off and provided, that's in electronic
4 format that would be responsive to request number
5 38, specifically from the streams and monitoring
6 division?

7 A There may be some, yes.

8 Q In the movable water quality programs
9 files, what types of documents would be
10 maintained there responsive to request
11 number 38?

12 A All the monitoring and sampling
13 documentation by site.

14 Q And in the planning and management
15 boxes, is there any -- what type of documentation
16 would generally be maintained there responsive to
17 request number 38?

18 A Sampling and monitoring type of
19 documents.

20 Q Are the documents -- the sampling and
21 monitoring documents that are in the water --
22 movable water qualities programs file, the
23 planning and management files and the streams
24 and monitoring the same types of documents, or
25 are these various different types of documents

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1 states, "Produce all data and documents related to
2 any coordination with other federal or state
3 environmental agencies and/or other public
4 entities for the purpose of investigating or
5 assessing the quality or quantity of surface and
6 groundwater within the Illinois River watershed."

7 Did you find any documents responsive to
8 request number 39 within the possession of the
9 Oklahoma Water Resources Board?

10 A Yes.

11 Q Where would those documents be located?

12 A Probably in most all of the categories of --
13 of documents.

14 Q Okay. Is there any specific category of
15 documents that would not contain information
16 responsive to request number 39?

17 A I don't -- I don't recall of any that would
18 not.

19 Q Okay. In water quality general, do you --
20 can you identify any boxes which may contain
21 information responsive to request number 39?

22 A Yes.

23 Q Which boxes are those, sir?

24 A One, three, five, six, seven, eight, nine,
25 fourteen.

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1 regarding sampling and monitoring?

2 A There may be some of both. Different
3 kinds or similar or duplicates.

4 Q Okay. Did you identify any documents
5 which were privileged or which you believe a
6 privilege should be asserted over which are
7 responsive to request number 38?

8 A I don't recall any specifically, no.

9 Q Okay. All right. Have you researched the
10 electronic media maintained, utilized and within
11 the possession of the Oklahoma Water Resources
12 Board for documents responsive to request
13 number 38?

14 A No, not at this time.

15 Q Okay. Do you intend on researching or
16 searching through the media files maintained,
17 utilized by or within the possession of the
18 Oklahoma Water Resources Board for documents
19 and data responsive to request number 38 and
20 then subsequently producing the same in
21 accordance with the Court's -- with a court order
22 and in cooperation with the Attorney General's
23 office?

24 A Yes.

25 Q Let's move on to request number 39. It

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1 Q What types of documents would be
2 contained in those files?

3 A I -- looks like a variety based on the
4 question.

5 Q Okay. Would there be reports?

6 A Yes.

7 Q Studies?

8 A Yes.

9 Q Any data for any reports prepared by the
10 Oklahoma Water Resources Board?

11 A To the extent that data was part of the
12 report and attached to it or otherwise associated,
13 it should be included.

14 Q Okay. What about communications
15 between that division and other state agencies?

16 A There may be memorandum or letters.

17 Q Okay. Are there any boxes that you can
18 specifically identify which may contain information
19 responsive to request number 39 within the water
20 quality standards files provided?

21 A Yes.

22 Q Which boxes?

23 A Nine and ten.

24 Q Can you identify any types of documents
25 which would be maintained that are responsive to

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1 request number 39?

2 A Reports, correspondence with the federal
3 EPA and other memorandum among the agencies.

4 Q Okay. In the streams and monitoring,
5 would there be any boxes specifically there that
6 may contain information responsive to request
7 number 39?

8 A Not that I'm aware of.

9 Q Okay. And would there be documents in
10 the streams and monitoring boxes that -- within
11 those boxes that are responsive to request
12 number 39?

13 A There may be some that I -- I just don't
14 recall.

15 Q Okay. What about the office of general
16 counsel? Are there any specific boxes which may
17 contain information responsive to request
18 number 39?

19 A Yes.

20 Q Which boxes, sir?

21 A Seventeen.

22 Q Okay. What types of documents would be
23 maintained in box seventeen that would be
24 responsive to request number 39?

25 A Perhaps copies of reports.

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1 Q Okay. What about in planning and
2 monitoring? Would there be any documents
3 responsive to request number 39 there?

4 A Yes.

5 Q Any specific box which may contain --
6 there's only one -- two boxes.

7 A Two. Both boxes.

8 Q Okay. What about the movable water
9 quality programs files? Would there be any
10 documents within those files responsive to request
11 number 39?

12 A Not that I'm aware of.

13 Q Okay. What about -- would there be any
14 documents within the lakes files produced
15 responsive to request number 39?

16 A Not that I'm aware of specifically.

17 Q And in the financial assistance, would
18 there be any documents responsive to request
19 number 39 in those files?

20 A There may be separate from the loan and
21 grant, though, that will also have documents
22 relating to that.

23 Q Have you provided all data and documents
24 responsive to request number 39 within the
25 possession of the Oklahoma Water Resources

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1 Board?

2 A Yes, except for electronic data or data or
3 documents for which a privilege is claimed.

4 Q Have you undertaken any search of the
5 electronic media utilized or maintained or within
6 the possession of the Oklahoma Water Resources
7 Board for documents or data responsive to request
8 number 39?

9 A No, not at this time.

10 Q Do you intend on undertaking a search of
11 the electronic media maintained, utilized or within
12 the possession of the Oklahoma Water Resources
13 Board for documents responsive to request
14 number 39 and then subsequently produce the
15 same in accordance with a court order and with
16 the cooperation of the Oklahoma Attorney
17 General's office?

18 A Yes.

19 Q Did you identify any documents which
20 were privileged -- which you believe a privilege
21 should be asserted over responsive to request
22 number 39?

23 A No.

24 Q Let's move on to request number 40.
25 "Produce all data and documents related to state

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1 water and waste water loans, grants, revolving
2 funds and other related financial aid programs
3 applicable to the Illinois River watershed."

4 Did you identify any documents
5 responsive to request number 40?

6 A Yes.

7 Q Where would those documents be located?

8 A Those are located in our financial
9 assistance division as active files and not boxed
10 up and brought up to this room today.

11 Q Right. And my understanding is you will
12 give us access to those files; however, they cannot
13 leave this building; is that correct?

14 A That is correct.

15 Q Okay. Is there any other section of the
16 Oklahoma Water Resources Board that would have
17 information responsive to request number 40?

18 A Not that I'm aware of.

19 Q Okay. Have you produced all data and
20 documents responsive to request number 40?

21 A Yes, except for electronic data and
22 documents or data and documents for which a
23 privilege is claimed.

24 Q Okay. Have you undertaken a search of
25 the electronic media maintained, utilized or within

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1 the possession of the Oklahoma Water Resources
2 Board for documents or data responsive to request
3 number 40?

4 A No, not at this time.

5 Q Okay. Do you intend on undertaking a
6 search of the electronic media maintained, utilized
7 or within the possession of the Oklahoma Water
8 Resources Board for documents or data responsive
9 to request number 40 and then subsequently
10 produce the same in accordance with a court order
11 and with cooperation of the Oklahoma Attorney
12 General's office?

13 A Yes.

14 Q Did you identify any documents or data
15 responsive to request number 40 for which you
16 believe a privilege should be asserted?

17 A No, except for account numbers for the
18 local loan payments to be made and the account
19 number for which the local loan payment is
20 forwarded to the Oklahoma Water Resources Board
21 trustee for payment on bonds. The account
22 numbers, to the extent they are confidential, will
23 be redacted or otherwise not provided.

24 Q Okay. Now, when we review these
25 documents upstairs, have they -- have those

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1 numbers already been redacted?

2 A They have not.

3 Q Okay. So upon copying, those numbers
4 will be redacted. Is that fair to say?

5 A To the extent that copies are requested of
6 documents on which those account numbers are
7 found, yes.

8 Q Okay. Have you been provided a copy of
9 the confidentiality order that's been entered in
10 this case?

11 A Not that I recall.

12 Q Okay. Are you aware that one exists in
13 this case?

14 A No.

15 Q Okay. Let's move to request number 41,
16 please. Request number 41 states, "Produce all
17 data and documents related to the handling,
18 treatment or disposal of waste water and/or
19 sewage within the Illinois River watershed."

20 Did you identify any documents within the
21 possession of the Oklahoma Water Resources Board
22 which would be responsive to the request --
23 request number 41?

24 A Yes.

25 Q Where would those documents be located?

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1 A In water quality general, standards and
2 office of general counsel. And to the extent a
3 duplicate of documents, loans, grants and
4 revolving funds and financial aid programs that
5 relate to waste water or sewage within the Illinois
6 River, that would also be applicable to that
7 request, as well.

8 Q Okay. Have you produced all documents
9 and data responsive to request number 41 within
10 the possession of the Oklahoma Water Resources
11 Board?

12 A Yes, except electronic data and documents
13 or data and documents for which a privilege is
14 claimed.

15 Q Can you identify any specific boxes within
16 the water quality general boxes that have been
17 provided which may contain documents or data
18 responsive to request number 41?

19 A Yes.

20 Q Which boxes?

21 A One, three, five, nine.

22 Q What types of documents would be
23 maintained in -- or would be contained in those
24 boxes which are responsive to request number 41?

25 A Most likely reports from other agencies.

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1 Q Okay. And in the water quality standard
2 boxes provided, are there any specific boxes which
3 may contain information specifically related to
4 request number 41?

5 A Yes.

6 Q Which boxes, sir?

7 A Eight and ten.

8 Q And what types of documents would be
9 maintained in those files that are responsive to
10 request number 41?

11 A Probably reports from other agencies and
12 perhaps correspondence relating to amendments to
13 water quality standards that relate to waste water
14 and/or sewage.

15 Q Okay. And when you say
16 "correspondence," is that correspondence with
17 other agencies?

18 A Comment letters or perhaps memorandum
19 or correspondence with this agency in drafting or
20 otherwise promulgating water quality standards.

21 Q Would there be any correspondence with
22 various waste water treatment facilities or --
23 within the Illinois River watershed?

24 A The facilities, I -- I don't know.
25 Concerning those, there may be correspondence at

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1 which a -- a waste water or sewage treatment
2 facility is referenced. The -- who that
3 correspondence may be between, I -- I am not
4 familiar at this time.

5 Q Okay. And in the office of general
6 counsel, are there any boxes which would
7 specifically contain -- which may contain
8 documents responsive to request number 41?

9 A Yes.

10 Q Which boxes?

11 A Seventeen.

12 Q Okay. And what types of information
13 would be contained in box number seventeen which
14 would be responsive to request number 41?

15 A It may be a report or correspondence.

16 Q Would that be the same types of reports
17 or correspondence contained in the water quality
18 standard and general files?

19 A There may be similar reports, yes.
20 Correspondence.

21 Q With regards to electronic media, have
22 you undertaken a search of the electronic media
23 maintained, used by or within the possession of
24 the Oklahoma Water Resources Board for data and
25 documents responsive to request number 41?

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1 responsive to request number 42 within the
2 possession of the Oklahoma Water Resources
3 Board?

4 A Yes.

5 Q Did you produce all documents and data
6 within the possession of the Oklahoma Water
7 Resources Board which are responsive to request
8 number 42?

9 A Yes, except for electronic data and
10 documents or data and documents for which a
11 privilege is claimed.

12 Q Okay. Where would documents responsive
13 to -- data and documents responsive to request
14 number 42 be located?

15 A In the water quality general files.

16 Q Okay. Any other files that have been
17 provided, would they be -- would any -- would they
18 contain any data or documents responsive to
19 request number 42?

20 A Not to my knowledge.

21 Q Okay. Did you identify any specific boxes
22 which contain -- which may contain information
23 responsive to request number 42?

24 A Yes.

25 Q Which boxes?

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1 A No, not at this time.

2 Q Okay. Do you intend on undertaking a
3 search of electronic media maintained, utilized by
4 or within the possession of the Oklahoma Water
5 Resources Board for documents responsive to
6 request number 41?

7 A Yes. With -- in conjunction with a court
8 order and in cooperation with the Office of
9 Attorney General.

10 Q Okay. Did you identify any documents or
11 data responsive to request number 41 for which
12 you believe a privilege should be asserted?

13 A I don't recall any specific, no.

14 Q Okay. Do you recall anything generally
15 that you believe should be -- would be considered
16 privileged responsive to request number 41?

17 A I do not recall.

18 Q Let's move on to request number 42.
19 Which states, "Produce all data and documents
20 related to the number, location, use, condition and
21 potential environmental impact from septic and
22 other non-municipal waste water, sewage
23 treatment systems within the Illinois River
24 watershed."

25 Did you identify any documents

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1 A Three, six and nine.

2 Q Okay. And what type of documents would
3 be maintained in those boxes responsive to request
4 number 42?

5 A Most likely reports.

6 Q Would that be reports from -- created by
7 the Oklahoma Water Resources Board?

8 A Most likely reports from other agencies.

9 Q Okay. Have you conducted any search
10 into the electronic media maintained, utilized or
11 within the possession of the Oklahoma Water
12 Resources Board for data and documents
13 responsive to request number 42?

14 A No, not at this time.

15 Q Okay. Do you intend on conducting a
16 search for all data and documents responsive to
17 request number 42 in the electronic media
18 maintained, utilized or within the possession of
19 the Oklahoma Water Resources Board?

20 A Yes, pursuant to an order of the Court
21 and in cooperation with the Attorney General's
22 office.

23 Q Did you identify any documents
24 responsive to request number 42 for which you
25 believe a privilege should be asserted?

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1 A No.
 2 Q Let's move on to request number 43.
 3 Request number 42 states, "Produce all data and
 4 documents related to the management, treatment
 5 and/or disposal of water treatment sludge or
 6 biosolids within the Illinois River watershed."
 7 Did you identify any documents within the
 8 possession of Oklahoma Water Resources Board
 9 responsive to request number 43?
 10 A Yes.
 11 Q Did you produce all documents and data
 12 that you have located -- or all data and documents
 13 responsive to request number 43 within the
 14 possession of the Oklahoma Water Resources
 15 Board?
 16 A Yes, except for electronic data and
 17 documents or documents and data for which a
 18 privilege is claimed.
 19 Q Okay. And are there specific boxes where
 20 -- that have been provided for review which
 21 contain information or data and documents
 22 responsive to request number 43?
 23 A Yes.
 24 Q Which boxes are those, sir?
 25 A The water quality category.

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1 A No, not at this time.
 2 Q Do you intend on undertaking a -- do you
 3 intend on undertaking a search of the electronic
 4 media within the possession of, maintained by or
 5 utilized by the Oklahoma Water Resources Board
 6 for documents and data responsive to request
 7 number 43?
 8 A Yes, in conjunction with a court order and
 9 in cooperation with the Attorney General's office.
 10 Q And do you intend on producing any
 11 documents or data that you identify in the
 12 electronic files of the Oklahoma Water Resources
 13 Board responsive to request number 43?
 14 A I thought that was the question you just
 15 asked.
 16 Q No. I asked if you intended on -- the first
 17 question was did you intend on conducting a
 18 search?
 19 A Yes.
 20 Q And do you intend on providing the
 21 documents that were found in that search?
 22 A Yes, in conjunction with a court order and
 23 in cooperation with the Attorney General's office.
 24 Q Okay. Did you identify any documents
 25 responsive to request number 43 for which you

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1 Q Is that water quality general?
 2 A General, yes.
 3 Q Okay. Any other category?
 4 A No, not to my recollection and knowledge.
 5 Q Are there specific boxes provided under
 6 the water quality general category which contain --
 7 which may contain data and documents responsive
 8 to request number 43?
 9 A Yes.
 10 Q Which boxes are those, sir?
 11 A Three, six and nine.
 12 Q Okay. And what type of documentation
 13 may be contained in those boxes which would be
 14 responsive to request number 43?
 15 A Most likely reports from other agencies.
 16 Q Do you know if there's any reports from
 17 the Oklahoma Water Resources Board that deal or
 18 relate to data or documents responsive to request
 19 number 43?
 20 A No. I'm not aware of any.
 21 Q Okay. For the electronic -- have you
 22 undertaken a search of the electronic media
 23 maintained by, utilized by or within the possession
 24 of the Oklahoma Water Resources Board for data
 25 and documents responsive to request number 43?

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1 believe a privilege should be asserted?
 2 A None that I'm aware of.
 3 Q Okay. Request number 44 states,
 4 "Produce all data and documents related to the
 5 quality of or constituents identified in
 6 groundwater within the Illinois River watershed."
 7 Did you identify any documents
 8 responsive to request number 44?
 9 A Yes.
 10 Q Have you produced all data and
 11 documents within the possession of the Oklahoma
 12 Water Resources Board responsive to request
 13 number 44?
 14 A Yes, except electronic data and documents
 15 or data and documents for which a privilege is
 16 claimed.
 17 Q Okay. Have you undertaken any search of
 18 the electronic media maintained by, utilized by or
 19 within the possession of the Oklahoma Water
 20 Resources Board for data or documents responsive
 21 to request number 44?
 22 A No, not at this time.
 23 Q Okay. Do you intend on undertaking a
 24 search of the media files -- I'm sorry -- electronic
 25 files or media utilized by, maintained by or within

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1 the possession of the Oklahoma Water Resources
2 Board for data and documents responsive to
3 request number 44 and subsequently produce the
4 same in accordance with a court order and with
5 the cooperation of the Oklahoma Attorney
6 General's office?

7 A Yes.

8 Q Where would documents and data
9 responsive to request number 44 that you are
10 producing be located?

11 A In the water quality general, standards,
12 the office of general counsel and in the planning
13 and management division, water well drillers,
14 licensing program files.

15 Q And just for clarification, the water well
16 drillers licensing program files are not within this
17 room; is that correct?

18 A That is correct. They are on the first
19 floor in the planning and management division.

20 Q And we will be granted access to review
21 those files; is that correct?

22 A Yes.

23 Q Okay. With regards to the water quality
24 general files, did you identify any boxes -- specific
25 boxes which may contain data or documents

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1 Resources Board. Others are provided by other
2 agencies or other individuals.

3 Q And has the data for the reports prepared
4 by the Oklahoma Water Resources Board been
5 provided in response to this request?

6 A To the extent they are a part of the report
7 or attached or data that's easily referenced, those
8 should be all contained within or associated with
9 that report.

10 Q Unless they're in electronic format.
11 Would that be accurate?

12 A Correct.

13 Q And the office of general counsel, are
14 there any specific boxes which may contain
15 documents or data responsive to request
16 number 44?

17 A Yes.

18 Q Which boxes?

19 A Number seventeen.

20 Q Okay. Which type -- what type of
21 documents would be maintained in box seventeen
22 which would be responsive to request number 44?

23 A Maybe a copy of a report.

24 Q If there was a copy of a report prepared
25 by the Oklahoma Water Resources Board, would

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1 responsive to request number 44?

2 A Yes.

3 Q Which boxes, sir?

4 A Six and fourteen.

5 Q And what types of documents may be
6 maintained in six and fourteen that are responsive
7 to request number 44?

8 A Most likely reports.

9 Q Okay. And the water quality standards
10 files, are there any specific boxes which may
11 contain data or documents which are responsive to
12 request number 44?

13 A Yes.

14 Q Which boxes?

15 A Seven.

16 Q Okay. What types of documents or data
17 would be maintained in box seven of water quality
18 standards that are responsive to request
19 number 44?

20 A Most likely reports. There may be
21 sampling documents about groundwater quality.

22 Q And the reports contained in the
23 standards, are those reports prepared by the
24 Oklahoma Water Resources Board?

25 A Some reports are compiled by the Water

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1 the backup data for that report be also maintained
2 there in the office of the general counsel?

3 A If it was made part of the report.

4 Q Okay. And planning and management, are
5 -- is there a specific box which may contain
6 documents or data responsive to request
7 number 44?

8 A Not that I'm aware of.

9 Q You indicated that planning and
10 management -- but you were referring to the water
11 well drilling licensing program files?

12 A Correct. As a division of the Oklahoma
13 Water Resources Board, as a separate designation
14 from the two boxes in this room that are noted
15 P&M.

16 Q Okay. Did you identify any data or
17 documents responsive to request number 44 for
18 which you maintain a privilege should be asserted?

19 A None that I recall.

20 Q Let's move on to request number 45.
21 Request number 45 states, "Produce all permits for
22 the use and/or appropriation of groundwater
23 within the Illinois River watershed "

24 Did you identify any documents within the
25 possession of the Oklahoma Water Resources Board

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1 responsive to request number 45?

2 A Yes.

3 Q Where would those documents be located?

4 A Some in the water quality category, the
5 general category. And then most within the
6 planning and management division with copies in
7 the file room in the basement of this building for
8 those permits that were issued and files kept
9 together before an imaging system was
10 implemented by the planning and management
11 division.

12 Q Do you know when that imaging system
13 was implemented?

14 A Approximately eight years ago, seven,
15 eight years ago.

16 Q Okay. So prior to that time they
17 maintained physical files of those permits; is that
18 correct?

19 A Yes. Together. We maintain the hard
20 copy document, but it is batched as -- after it is
21 imaged. So there could be all sorts of documents
22 as it comes in, and as imaged that day is put in
23 one folder and taken also downstairs to the
24 planning and management file room to be retained.

25 Q Okay. So for -- just for my

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1 day, whether they specifically deal with one permit
2 or several.

3 Q Okay. And so they're no longer broke out
4 in your file room by specific permits?

5 A That's correct.

6 Q Okay. We'll come back to that.

7 Are we going to be provided access to
8 review those files?

9 A The --

10 Q The physical files?

11 A The file room physical files and then as
12 the electronic discovery process, the image system
13 and its description and those documents will be
14 addressed at that point.

15 Q Okay. And in the water quality general
16 files, are there specific boxes which may contain
17 information responsive to request number 45?

18 A Yes.

19 Q Which boxes?

20 A Number six.

21 Q Okay. And what type of information
22 would be contained in box number six that's
23 responsive to request number 45?

24 A It may be a report with a -- a reference to
25 quantities of groundwater for which a permit has

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1 understanding, what I'm envisioning that you're
2 telling me is after the implementation of the
3 imaging system, any permit that was imaged that
4 day would be batched together and put in a file
5 maybe specifically identified for that day as
6 permits. Would that be accurate?

7 A The images are kept by permit or
8 application number, and all documents including
9 the permit after it is -- after it is issued are
10 retained in the imaged electronic system.

11 Q And I guess what I was confused about is
12 prior to the imaging system, you maintained
13 permit files for a specific, maybe, permittee and
14 all those records were maintained by permittee?

15 A By permit number.

16 Q By permit number?

17 A Correct.

18 Q Whereas, now you maintain that
19 information segregated similarly in an image file
20 as opposed to in a physical file?

21 A That is correct.

22 Q And then the physical permit or the --
23 that is imaged is then maintained in a batch group
24 for those permits that were imaged that same day?

25 A For all documents that were imaged that

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1 been issued.

2 Q Okay. So with regards to request
3 number 45, have you engaged in or undertaken a --
4 a search of all electronic files maintained by,
5 utilized by or within the possession of the
6 Oklahoma Water Resources Board for documents
7 responsive to request number 45?

8 A No, not at this time.

9 Q Do you intend on undertaking a search of
10 the electronic media files maintained by, utilized
11 by or within the possession of the Oklahoma Water
12 Resources Board which are responsive to request
13 number 45?

14 A Yes, in conjunction with the court order
15 and in cooperation with the Office of Attorney
16 General.

17 Q Okay. And do you intend on producing
18 those documents which you find electronically
19 which are responsive to request number 45?

20 A Yes, similarly.

21 Q Okay. Similarly, in that -- I'm sorry it's
22 similarly in that in accordance with a court order
23 and with the cooperation of the Attorney General's
24 office?

25 A Correct.

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1 Q Let's move on to request number 46.
2 Request number 46 states, "Produce all documents
3 and data related to the management and treatment
4 and/or disposal of solid waste, semi solid waste,
5 liquid waste, waste water and sewage generated at
6 Tenkiller State Park, Adair State Park, Natural
7 Falls State Park and Cherokee Landing State
8 Park."

9 Did you find any documents within the
10 possession of the Oklahoma Water Resources Board
11 responsive to request number 46?

12 A To the extent there may be loan or
13 financial assistance documents on one of these
14 parks, there may in the financial assistance
15 division records for which you will have access.

16 Q Okay. And did the other sections of the
17 Oklahoma Water Resources Board search their files
18 for documents responsive to request number 46?

19 A Yes.

20 Q And is it fair to state that you're telling
21 me that they don't have any documents responsive
22 to request number 46?

23 A That's correct.

24 Q Have you produced all documents and
25 data responsive to request number 46 within the

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1 documents responsive to request number 46 for
2 which you believe a privilege should be asserted?

3 A To the extent there may be a financial
4 assistance or a loan with account numbers as
5 mentioned before, those would be redacted --

6 Q Okay.

7 A -- copies.

8 Q I'm going to go back to 45 because I
9 believe I didn't ask you the follow-up question
10 with regards to privilege.

11 Did you identify any documents or any
12 permits responsive to request number 45 for which
13 you believe a privilege should be asserted?

14 A None specifically that I'm aware of.

15 Q Okay. Let's move on to request
16 number 47. Request number 47 states, "Produce
17 all data and documentation related to and created
18 by OWRB pursuant to OWRB's coordination,
19 obligation and responsibilities under Senate
20 bill 972 for the Secretary of the Environment,
21 including all documents and data received from or
22 transmitted to the Oklahoma Secretary of
23 Environment and/or his representatives or any
24 other state agency or commission with regards to
25 the Illinois River watershed."

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1 possession of the Oklahoma Water Resources
2 Board?

3 A Yes, except for electronic documents and
4 data or documents and data for which a privilege
5 is claimed.

6 Q Okay. Have you -- has the Oklahoma
7 Water Resources Board undertaken a search of all
8 electronic files maintained, utilized by or within
9 the possession of itself for documents responsive
10 to request number 46?

11 A No, not at this time.

12 Q Okay. Do you intend on conducting a
13 search of the electronic files utilized by,
14 maintained by and within the possession of the
15 Oklahoma Water Resources Board for documents
16 responsive to request number 46 and subsequently
17 produce the same?

18 A Yes, in conjunction with a court order and
19 in cooperation with the Office of the Attorney
20 General.

21 Q Did you identify any documents
22 responsive to request number 46 for which you
23 believe a privilege should be asserted?

24 A None specifically.

25 Q Did you identify any categories of

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1 Did you identify any documents within the
2 possession of the Oklahoma Water Resources Board
3 responsive to request number 47?

4 A We did not.

5 Q Please, explain the process by which your
6 sections searched their files for documents and
7 data responsive to request number 47.

8 A As other documents, with respect to any
9 documents relating to the Illinois River watershed
10 and with this specific request mentioning Senate
11 bill 972 and those employees that may have been
12 familiar with that and a review of those files,
13 apparently showed no -- no data or documentation
14 unless they are electronic by E-mail.

15 Q Okay. And has -- have you undertaken a
16 search of the electronic files maintained by,
17 utilized by or within the possession of the
18 Oklahoma Water Resources Board for data or
19 documentation responsive to request number 47?

20 A No.

21 Q Do you intend on undertaking a search of
22 the electronic files within the possession of,
23 utilized by or maintained by the Oklahoma Water
24 Resources Board for documents responsive to
25 request number 47 and then subsequently produce

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1 the same?

2 A Yes, in conjunction with a court order and
3 in cooperation with the Office of Attorney General.

4 Q Okay. Let's move on to request
5 number 48. Request number 48 states, "Produce
6 any data or documents that relate to the study and
7 title 'Monitoring of Tenkiller Ferry Lake near
8 Horseshoe Bend and Caney Creek to support Lake
9 Tenkiller TNBL and BNP activities, 1998
10 through 2000."

11 Did you find any documents or data
12 responsive to request number 48?

13 A Yes.

14 Q Okay. And did you produce all documents
15 and data responsive to request number 48 within
16 the possession of the Oklahoma Water Resources
17 Board?

18 A Yes, except electronic data or documents
19 or data or documents for which a privilege is
20 claimed.

21 Q Okay. Where would those documents and
22 data responsive to request number 48 be located in
23 your production?

24 A In the water quality general.

25 Q Okay. Are there specific -- are there any

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1 produced or if the CD is in that box.

2 Q Okay. So if it was put on a CD, that CD
3 would be in the box?

4 A That's my recollection of how we
5 discussed to go ahead and provide that.

6 Q Okay. Has there been any -- any search
7 of the electronic files maintained by, utilized by or
8 within the possession of the Oklahoma Water
9 Resources Board for data and documents
10 responsive to request number 48?

11 A Yes, as noted to provide that background
12 data and documents for that report.

13 Q Okay. So all electronic data from the
14 Oklahoma Water Resources Board's files relating to
15 this particular study have been provided?

16 A That's my understanding; that's correct.

17 Q Well, when I asked you if all the
18 documents and data had been provided, you said
19 except electronic and privileged. And so I guess
20 I'm confused because now you've said that those
21 things have been provided -- that an electronic
22 search had been made and -- of the files.

23 A To the extent the CD contains copies of
24 those electronic data, and I assume on the main
25 server or wherever else electronic data and

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1 other sections which would have documents
2 responsive to request number 48?

3 A Not that I'm aware of.

4 Q Okay. Are there any specific boxes
5 provided under the water quality general category
6 which may contain documents or data responsive
7 to request number 48?

8 A I believe it is in number -- water quality
9 general number ten.

10 Q Okay. And what type of documentation or
11 data would be contained therein?

12 A As requested, the data and documents
13 relating to that study that's -- as indicated.

14 Q Is that a study conducted by the
15 Oklahoma Water Resources Board?

16 A Yes, to my knowledge.

17 Q Okay. Was sampling data supporting that
18 study provided in the -- in box ten?

19 A I believe it is in box ten. It may be
20 another box. This was the subject of an open
21 records request previously with the report
22 provided, but a clarification about the background
23 data and documents. And I believe those were
24 either put on a CD or -- I don't know if copies of
25 the hard copy of the data and documents were

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1 documents are kept, those are likewise also
2 continued to be maintained electronically. And
3 those would be separately, I guess, copied again if
4 necessary pursuant to court order and in
5 cooperation with the Office of Attorney General.

6 Q Okay. And privilege, did you identify any
7 documents or data responsive to this request for
8 which you believe a privilege should be asserted?

9 A None that I recall.

10 Q Let's take a break. And I've got some
11 more questions to ask you, more generally. And --
12 but let's take a break since I think we've been
13 going for much longer than an hour this time.

14 MS. GENTRY: Yeah.

15 (A recess was taken from 3:44 to 3:53
16 PM.)

17 MS. LONGWELL: On the record. I'm
18 going to pause my line of questioning to allow my
19 joint counsel, Colin Tucker, on behalf of Cargill
20 multiple entities to ask a few questions. And then
21 I will reconvene my questions.

22 CROSS EXAMINATION

23 BY MR. TUCKER:

24 Q I've handed you Exhibit-03. If you would
25 review that for a moment, and once you have, tell

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1 me if you can recall having reviewed it before.

2 A Yes, I believe the Office of Attorney
3 General provided copies of documents. I don't
4 recall specifically about amended first
5 interrogatories and request for productions, but I
6 do believe the Cargill Turkey production was in
7 that group of documents provided by the Office of
8 Attorney General some time ago.

9 Q Is it your general understanding that you
10 have received copies from the Attorney General of
11 the discovery requests issued by all the parties in
12 this lawsuit?

13 A Yes.

14 Q Did you participate in providing answers
15 to any of the discovery requests that are in Exhibit
16 Number 3?

17 A In terms of the documents, request for
18 productions or the interrogatories? I'm sorry.

19 Q Actually, the question was simply any. If
20 you have any recollection as to yes as to some or
21 as to definitely no as to others, that would be
22 helpful.

23 A Yes. We -- in reviewing the documents
24 here today provided in this room, whether they
25 also complied with other requests besides

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1 to the interrogatories, as well? Or did your work
2 limit itself to identification of the documents?

3 A I think just for the request for production
4 of documents.

5 Q Do you recall having had any input in the
6 course of this lawsuit to answering anyone's
7 requests for interrogatories?

8 A I don't recall specific -- specifically
9 sitting down about that on the specific
10 interrogatories, no.

11 Q Do you recall anyone from any other
12 agency contacting you and asking for assistance in
13 their work in answering interrogatories?

14 A No, not that I recall.

15 Q If I were to hand you additional sets of
16 requests for production issued in this case and
17 ask if you think you've seen them, as well, would I
18 expect your response to be, "I probably have seen
19 them because I understand I've seen all the ones
20 that were issued"?

21 A That would probably be my answer.

22 Q Then I can save you Exhibits 4, 5, 6
23 and 7. And that's all I have.

24 MS. LONGWELL: Are Exhibits 4, 5 and 6
25 and 7 --

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1 Peterson, yes.

2 Q Then it's correct, then, if I understand,
3 that -- that you did have a role in reviewing these
4 questions to determine if this agency had any
5 responsive documents to the questions in
6 Exhibit 3?

7 A Again, I received these, summarily
8 reviewed them and then worked with the office of
9 Attorney General's staff as they helped pull all the
10 boxes together and put those and categorized
11 those. So, yes, I did review that to that extent.

12 Q Did you review any documents within the
13 boxes you've referenced to identify responses to
14 any of those questions?

15 A Yes. The Office of Attorney General in
16 reviewing the documents for Peterson also
17 identified those that would be responsive to this
18 request.

19 Q So that was a function that the Office of
20 the Attorney General performed and not you?

21 A It was -- as custodian of records, I
22 worked with the Office of Attorney General, yes.

23 Q Did you -- this Exhibit 3 contains both
24 request for production and interrogatories. Did
25 you participate in the process of finding answers

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1 MR. TUCKER: They won't be exhibits.

2 MS. LONGWELL: They won't be exhibits?
3 Okay. So I would start with Exhibit 4? Okay.

4 DIRECT EXAMINATION
5 (Continued) BY MS. LONGWELL:

6 Q I want to ask you some questions, Mr.
7 Couch, about some specific reports and whether
8 they, to your knowledge, have been contained in
9 the production provided that are responsive to
10 Peterson's request for production.

11 Do you know if the 2002 report on the
12 Illinois River Basin tour has been provided in
13 response to Peterson's request for production of
14 documents?

15 A The tour?

16 Q It's a report, the Illinois River Basin tour
17 report.

18 A I recall documents about a -- that were
19 provided during a board meeting at which members
20 of the Oklahoma Water Resources Board and others
21 did a tour. And I do believe all of those
22 documents are provided. There may have been a
23 Power Point presentation and a handout that was
24 provided to the board members during that tour, if
25 that's the tour that's being referenced.

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1 Q And who -- do you recall who organized
2 that tour, which agency?

3 A There -- primarily, the water quality
4 programs division of the Oklahoma Water
5 Resources Board. There may have been input from
6 the Scenic Rivers Commission.

7 Q Okay. Were -- was there any -- was the --
8 do you know whether or not the backup data in
9 support of that tour, if any, was -- has been
10 provided as a part of this production?

11 A I'm not clear what backup data to the
12 tour would be except for information contained in
13 those handouts. And, yes, I assume that is
14 provided as part of the water quality program's
15 files and in those boxes.

16 Q Okay. Has -- is there any limitation with
17 regards to electronic files which may be
18 maintained specifically related to this particular
19 document?

20 A To my knowledge, we have not produced
21 the electronic data or documents relative to those
22 handouts at the -- for the tour.

23 Q Okay. Are you familiar with the
24 Oklahoma Water Watch Greater Tenkiller Area
25 Association of Illinois River OWW chapter's draft

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1 obtained by those associations that are voluntarily
2 taking samples in the Tenkiller and Illinois River
3 -- Tenkiller Lake and Illinois River watershed, do
4 they provide -- are they required to provide all the
5 sampling results and the backup data for that
6 sampling to the Oklahoma Water Resources Board
7 or the Oklahoma Water Watch?

8 A That's my recollection of the Water Watch
9 program personnel, are to maintain or obtain that
10 information. I don't recall if it's fully integrated
11 for electronic submittal or hard copy documents
12 are submitted and those sample results that may
13 be produced by individuals or cumulatively by
14 organizations. But my recollection and
15 understanding of the program is that it is
16 submitted in some fashion to the Water Watch
17 program personnel.

18 Q And would -- if this water --

19 MS. GENTRY: Nicole, let me stop you
20 here for just a second. I think we're getting
21 outside the scope, again, of what this particular --
22 about the documents that are in the room here.
23 And I would ask you to try to hone in on what the
24 scope of this deposition is all about.

25 MS. LONGWELL: I'm questioning,

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1 data summary from 1997 to 2002?

2 A I'm not familiar with that.

3 Q Okay. So you wouldn't be able to testify
4 as to whether that -- I mean, that report or that
5 summary or any of the data supporting that
6 summary have been produced in response to
7 Peterson's discovery requests?

8 A Not specifically familiar with it. If it was
9 being retained by the water quality programs
10 division, it was part of the Illinois River watershed
11 general document request and gathering that we
12 provided.

13 Q Is the -- I'm sorry. Is the Oklahoma
14 Water Watch a -- affiliated in some way with the
15 Oklahoma Water Resources Board?

16 A It is a program coordinated by some staff
17 members of the water quality programs division
18 and carried out, however, by volunteers. And in
19 some areas those volunteers have organized either,
20 to my recollection, unincorporated associations or
21 other kinds of entities that will actually conduct
22 the -- the sampling or monitoring in the water
23 body, whether it's a lake or stream, under the
24 Oklahoma Water Watch guidance and --

25 Q When those samples are conducted -- are

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1 however, where you believe I'm going outside the
2 scope when I'm talking about studies that are
3 conducted or organized by the Oklahoma Water
4 Resources Board, which are directly relevant to my
5 discovery request, how those would be out-- how
6 questioning Mr. Couch about the location of
7 sampling or data or backup data or the report
8 itself related to the Oklahoma -- or directed by the
9 Oklahoma Water Resources Board is outside the
10 scope of my discovery request.

11 I'm not sure how it is. And I guess before
12 I limit it to anything or agree to limit anything, I
13 would like you to explain to me how that would be
14 outside the scope of the discovery request.

15 MS. GENTRY: Okay. Well, if it's not in
16 his capacity as records custodian, then I think it's
17 outside the scope.

18 MR. HAMMONS: If you're asking Mr.
19 Couch specifically about a report that relates that
20 may be produced within this production, if it's
21 here or what it's about, but to describe
22 substantively what a report may contain or that
23 sort of information, I believe it would be outside
24 the scope.

25 MS. LONGWELL: Sure. I would agree

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1 with you as to what the scope -- I mean, what the
2 report necessarily contains, with the exception of
3 the fact if I'm trying to understand what division
4 or which section or what organizations or
5 associations that are directed by some committee
6 operating under the jurisdiction of the Oklahoma
7 Water Resources Board, how -- you know, data
8 related to that report is maintained when my
9 request specifically asks for that backup data, I do
10 not believe those questions are outside the scope
11 of this discovery -- of this deposition as a
12 custodian of records. I'm asking where this data
13 would be located and then ultimately whether it's
14 been produced.

15 MS. GENTRY: Okay. Well, that will be
16 fine, except some of your questions are kind of a
17 lot broader than that. So if you could try to just
18 hone in on --

19 MS. LONGWELL: I will ask the questions.
20 I'll take your scope under advisement, but I need
21 to ask the questions so that I can determine where
22 the data would be located and whether or not it's
23 been produced after I conduct my review. So
24 that's where my questions are limited to.

25 Q (BY MS. LONGWELL) Let me ask you -- so

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1 to whether that report and the backup data related
2 to that report have been provided in response to
3 my discovery request?

4 A Again, specifically, I don't know where
5 that report is. But to the extent it was within the
6 request for all the employees to gather that data,
7 that would have been included.

8 Q With the exception of electronic data?

9 A That's correct.

10 Q The 2002 beneficial use monitoring
11 program, lakes monitoring program report, has
12 that -- has that been provided in response to my
13 discovery request?

14 A To my knowledge, that is within the
15 rolling file cabinets by year for the beneficial use
16 monitoring program.

17 Q Okay. And the data backing up that
18 report, other than electronic data, has that been
19 produced, to your knowledge?

20 A Likewise, in the rolling file cabinets by
21 monitoring station name, those are kept and
22 maintained.

23 Q Okay. Beneficial use monitoring program
24 stream sampling 2002-2003 draft final report, has
25 that been provided in response to my discovery

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1 my understanding from what you're telling me is
2 ultimately the Oklahoma Water Resources Board
3 would have data that would be related to any
4 Water Watch project that's conducted in the
5 Illinois River or watershed or Lake Tenkiller?

6 A To my knowledge, those collection sheets
7 are presented to the water quality programs
8 division, Water Watch Association employees.

9 Q Okay. And, subsequently, if those -- that
10 Water Watch summary would be -- is responsive to
11 my discovery requests, then they would be
12 provided in response to my discovery request?

13 A Yes, I believe that has been provided.

14 Q And, once again, with regards to
15 electronic data, however, that data would not have
16 been produced necessarily?

17 A That's correct.

18 Q Are you familiar with the Oklahoma Water
19 Resources Board report -- 2005 report,
20 "Justification for Adding Nutrient Limited
21 Watershed Designations to Water Bodies in
22 Appendix A, Lake Tenkiller and Lake
23 Thunderbird"?

24 A Not specifically familiar with that report.

25 Q Okay. So would you be able to testify as

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1 requests?

2 A To the extent that document would be
3 available, I'm assuming in the beneficial use
4 monitoring program rolling file cabinets, that it
5 would be located there.

6 Q With the exception of the electronic files?

7 A Those are all hard copy files and not
8 electronic files.

9 Q Okay. Of the Oklahoma's beneficial use
10 monitoring program 2005 report, to your
11 knowledge, has that been provided in response to
12 my discovery request?

13 A Yes, except for the electronic data and
14 documents.

15 Q Okay. And that would be data supporting
16 the report, as well; is that correct? Electronic
17 data supporting that report?

18 A Yes. And the rolling file cabinets by
19 monitoring station, except for electronic data that
20 may have also been retained.

21 Q And with regards to the program we've
22 been talking about, the beneficial use monitoring
23 program and the various reports, do you intend on
24 conducting a search for the backup data
25 responsive -- for those reports at the -- at the time

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1 you're directed to do so by the Oklahoma Attorney
2 General's office?

3 A For the electronic data, I understand that
4 there will be a court order issued and we will in
5 cooperation with the Attorney General's office
6 conduct that search.

7 Q Okay. What about the 2003 "Phosphorous
8 Concentration Loads and Yields in the Illinois
9 River Basin, Arkansas and Oklahoma, 1997
10 to 2001." Do you know whether that report has
11 been provided in response to my discovery
12 request?

13 A The hard copy document, if it was
14 retained by the water quality programs division, it
15 should be included in those boxes. And the
16 electronic data has not been provided.

17 Q But will be provided upon the -- in
18 accordance with the court order and in -- with the
19 cooperation of the Attorney General's office?

20 A Correct.

21 Q Do you know -- do you know whether the
22 annual report from the Oklahoma Water Resources
23 Board for -- I'm trying to figure out how long it's
24 been created. For the yearly -- annual reports for
25 the Oklahoma Water Resources Board, do you know

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1 Oklahoma Water Resources Board annual report is
2 -- you can download that. That's what you were
3 referring to?

4 A Yes. I assume so.

5 Q Okay. But I'm assuming that if these are
6 maintained electronically, once an order is entered
7 from the Court and with the cooperation of the
8 Attorney General's office, you will be producing
9 this report in electronic format?

10 A In electronic format if, I assume, by
11 virtue of being on the website it is in some
12 electronic format to be produced that way.

13 Q Okay. And -- but as -- I would like to
14 direct you to the -- the first page, it says, "2003
15 Oklahoma Water Resources Board," and then the
16 fourth entry is "Oklahoma Water Resources
17 Board 2001 Annual Report." And then they've got
18 on the following page, "Oklahoma Water Resources
19 Board Annual Report for 1996," highlights 1995,
20 "The Annual Report of the Oklahoma Water
21 Resources Board," and then the "Oklahoma Water
22 Resources Board annual report for 1994." Do you
23 see that?

24 A Yes.

25 Q As being -- okay.

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1 whether those have been provided in response to
2 my discovery request?

3 A I believe those are electronically
4 maintained and accessed on the website. I don't
5 recall unless there were incidental copies
6 maintained in some files that they would be there.
7 But not -- I'm not sure of all the years.

8 Q Are all the years available on the website?

9 A I'm not sure how far back or exactly what
10 years that they were able to either scan in or
11 provide electronically on the website.

12 Q Okay. Let me -- let me -- let me provide
13 to you -- I'm going to provide to you what I'm
14 marking as Exhibit-04 to your deposition. And I
15 apologize, the copy is not -- there's a copy for
16 counsel. Oh, I guess it is stapled. It's just
17 stapled in the lower left-hand corner.

18 Okay. I've gone to the website for the
19 Oklahoma Water Resources Board and printed off
20 the publications and also some other documents --
21 I mean, tables here. And I'm specifically -- I
22 would like to direct your attention to the first
23 section -- first table which starts on the first page
24 and continues on to the second page.

25 And here they indicate that the 2003

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1 And then the following table says,
2 "Out-of-Print Publication." And there appears to
3 be a series of the same report that are out of
4 print. Does that mean that the only way to obtain
5 copies of those annual reports is directly from the
6 Oklahoma Water Resources Board?

7 A That would be an assumption. I don't
8 create or maintain the website and exactly know
9 the meaning or how those documents would be
10 maintained. But that would be an assumption.

11 Q And these documents, can you tell me
12 whether or not these annual reports have been
13 provided responsive to my discovery request, these
14 out-of-print public -- publications specifically
15 related to the Oklahoma Water Resources Board
16 annual report?

17 A Unless they were incidentally a part of
18 some files that were provided, I'm not certain that
19 there's been a specific effort to identify annual
20 reports by dates as listed.

21 Q Okay. So you don't -- you can't tell me
22 unless incidentally they've been provided. You've
23 indicated to me that they've been maintained
24 electronically; is that correct?

25 A What is available to be downloaded, I'm

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1 assuming -- I'm not a website or a computer
2 person. I'm assuming that is electronically
3 maintained to be able to be downloaded.

4 Q Right.

5 A Where it says "out of print," I'm further
6 assuming it is not electronically maintained and
7 may be available as an out-of-print document. But
8 I'm unaware, specifically, where those are
9 gathered and maintained.

10 Q And whether -- and then, ultimately,
11 you're unaware as to whether those have been
12 produced in response to my discovery request?

13 A Yes, I'm unaware that they have been.
14 (An off-the-record discussion was had
15 between witness and his counsel.)

16 Q (BY MS. LONGWELL) Do you know whether
17 the water quality standards issued by the
18 Oklahoma Water Resources Board from 1968 to the
19 present have been provided in response to
20 Peterson's discovery requests?

21 A To my knowledge, we did attempt to
22 gather those, and whatever documents we did
23 retain from that period, some bound publications
24 and other rule-making files when those were
25 promulgated, there were some prior to 1995,

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1 mostly after 1995. And those have been provided.

2 Q And do you know where they would be
3 located in the production?

4 A Either in the standards for the water
5 quality division or in the office of general counsel
6 --

7 Q Okay.

8 A -- boxes.

9 (An off-record-discussion was had
10 between witness and counsel.)

11 Q (BY MS. LONGWELL) I'm going to provide
12 you what I'm marking as Exhibit-05 to your
13 deposition. Again, this is a printout from the
14 Water Resources Board website. And the title of
15 Exhibit 5 is "Out-of-Print Technical Reports." I'm
16 not going to ask you about every single one of
17 those, but I do have some specific reports that are
18 identified on this printout.

19 MS. GENTRY: Nicole, what response are
20 these -- I mean, which request for production are
21 these out-of-print technical reports responsive to?

22 MS. LONGWELL: That would be all of
23 them. Any one that -- any one that was produced
24 by the Oklahoma Water Resources Board related to
25 the Illinois River watershed, and I plan on going

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1 specifically through those particular ones. Not
2 each and every single one of these on this list is
3 responsive. But there are certain ones that I want
4 to ask about.

5 Q (BY MS. LONGWELL) On the second page
6 of this report, six items down indicates there is a
7 hydrological investigation of the Illinois River
8 watershed -- or the Illinois River, and it says 1987
9 is the date.

10 Do you know whether or not this
11 out-of-print technical report has been provided in
12 response to my discovery request?

13 A I'm unaware that it has been provided. To
14 the extent that it would be retained in our general
15 library or within the planning and management
16 division for water quantity matters, it may be
17 available there.

18 Q Okay.

19 MR. HAMMONS: And if I could, tomorrow
20 -- I didn't bring with me today -- we've produced
21 the library downstairs to you guys as part of our
22 initial productions. And I will provide a list of
23 everything that we've produced. And if there's
24 certain things on here which may be answering
25 your questions here, that library is more than

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1 available for you to go down and look at those
2 documents.

3 MS. LONGWELL: And that's fine. And I
4 appreciate that. I just don't get to ask the
5 questions after I look at that list.

6 MR. HAMMONS: Okay.

7 MS. LONGWELL: So I'm going to ask
8 them now if that's all right.

9 Q (BY MS. LONGWELL) Also, let's look at --
10 my printout's a little bit different than yours.
11 Page 3 of 6. The sixth item down states, "Tenkiller
12 Ferry, lower Illinois River, 1979, temperature
13 dissolved oxygen determination."

14 Do you know whether or not that report
15 has been provided in response to Peterson's
16 discovery requests?

17 A To the extent it was retained within the
18 water quality programs division. There were
19 discussions about older reports. All of those were
20 gathered for purposes of producing those. If not,
21 a -- on a particular named report, those would be
22 available in the -- I suspect that one in the library
23 from 1979. Again, if those listed on here, I
24 assume there was some review of those documents
25 and that that is continued to be maintained in the

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1 library.

2 Q So your assumption is if it's on this list,
3 it's in the library, most likely?

4 A Or in the water quality programs division
5 if it deals with water quality.

6 Q Okay.

7 A Sometimes there are multiple copies
8 retained in the agency.

9 Q Are you aware -- or is the -- I notice that
10 some of these publications refer to regions,
11 region 1, region 2, region 3. And I'm looking more
12 specifically at the older reports. Do you know
13 which region the Illinois River watershed would
14 have been located in?

15 A If you could point out a --

16 Q Just go to the very last -- page 5 of 6.
17 The very last three entries say "Appraisal of Water
18 and Related Land Resources.

19 A Those were primarily water quantity. And
20 the Oklahoma comprehensive water plan reviews
21 conducted in the 1970s -- looks like '60s for some
22 of these regions, I can't recall which region the
23 Illinois River watershed would be in.

24 Q Would these documents also be located in
25 the library?

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1 hold, what's been happening.

2 Could you explain what the agency's
3 E-mail retention/destruction procedure is with
4 regards to the individual and then the server
5 E-mail, to the best that you can?

6 A My recollection from the early 1990s, an
7 E-mail retention policy that was put in place to
8 maintain those E-mails on the -- in the mail box --
9 I -- not knowing the computer system, but
10 wherever that is for the individual maintained on
11 an E-mail server, those would be retained there
12 for 30 days, and then there would be an automatic
13 prompt and change to a deleted folder and
14 maintained there for some period of time until they
15 were deleted.

16 About a year ago when knowledge of this
17 litigation and potential Oklahoma Water Resources
18 Board involvement became to our knowledge and at
19 a meeting with the Office of Attorney General's
20 staff and then a follow-up letter to the executive
21 directors of the various agencies, then there was
22 information provided to several key employees that
23 all E-mails should be retained. And as the -- and
24 other documents relating to the Illinois River
25 watershed in general should all be retained and

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1 A Yes. And I -- yes. I think down there
2 there is one complete set. These were very old
3 documents, and in the move from the bombing I
4 recall seeing some of the regions, but not all. But
5 at some point in time I think we have gathered one
6 complete set.

7 Q Okay. And then the one right above those
8 three, it says "Chemical Criteria for Water in
9 Oklahoma." Do you know whether or not that
10 report was provided in response to Peterson's
11 discovery requests?

12 A Not knowing a better description, I would
13 assume that is maintained as a historical
14 document in the library. And if there were
15 multiple copies, then that copy was maintained in
16 the water quality programs division. And that
17 would have been provided as part of their
18 document gathering.

19 Q I just have a kind of follow-up question
20 regarding E-mail. Because I don't mean to be
21 confused, but I am a little bit confused. So maybe
22 I can get a little clarification just so I leave kind
23 of feeling comfortable with knowing the protocols
24 -- the destruction and E-mail retention procedure
25 that was in place and then after the litigation

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1 not destroyed.

2 And then as the specific information
3 about the requests were provided, then a
4 suspension of the E-mail policy for other
5 employees, a total of approximately 25 or 30, I
6 believe, met with the IT personnel to explain about
7 the requirement to save all E-mails relating to the
8 Illinois River watershed on personal drives.

9 Then there was also by the IT folks a -- a
10 stop on any deletion of any E-mails with respect to
11 the Illinois River watershed that may not
12 accidentally be saved by the individual employee,
13 but as it goes through the system, those are
14 likewise retained.

15 Q Okay. So your understanding -- and this
16 is my understanding -- is that the E-mails are
17 maintained individually, but there's also like a
18 copy on the server of that particular E-mail?

19 A No. The regular E-mail mailbox is on the
20 E-mail server.

21 Q Okay.

22 A And if it deals with the Illinois River
23 watershed by any number of these employees that
24 have any activities, including the financial
25 assistance division or planning and management

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1 division, they are instructed to save those
2 manually to what is called an H drive, which is a
3 separate server that is maintained for all of the
4 employees. And they are to manually save those to
5 that H drive.

6 Q Okay. And then -- and then the backup is
7 that the server, the AT (sic) people are not --

8 A Will catch any of those that are not
9 saved--

10 Q Right. To that H drive.

11 A -- but have that anywhere in the E-mail,
12 the Illinois River or Illinois River watershed.

13 Q Uh-huh.

14 A And those will be retained -- I'm not sure
15 where they retain it. I'm not --

16 Q So your IT person probably could describe
17 better --

18 A Yes.

19 Q -- how the policy's being implemented?

20 A Correct.

21 Q Or the retention hold.

22 Before the actual litigation hold was
23 placed on there, I guess that's where my confusion
24 lies. And maybe that's the same. But you're
25 telling me that the individual may maintain it in

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1 of this witness at this time. But as noted for the
2 record, Peterson Farms noticed up this records
3 custodian deposition. And Tyson and all the Tyson
4 entities reserve the right to -- if they feel it's
5 necessary in the future to conduct their own
6 records custodian deposition of someone from the
7 Oklahoma Water Resources Board, as well as any
8 fact depositions which may arise out of review of
9 these documents.

10 MR. THOMPSON: And I would add to that
11 inasmuch as my firm has not propounded any
12 discovery upon the OWRB, we would join in and
13 also reserve that right.

14 MS. BRONSON: I say that as well.

15 MR. HAMMONS: And we would object to
16 that, reserve our objections for the record, that
17 everybody's here and had the opportunity to
18 preserve that objection.

19 MS. LONGWELL: Well, since I feel like I
20 need to assert an objection since I'm the only one
21 that hasn't, I would state that I reserve the right
22 to recall Mr. Couch with regards to electronic files
23 once they are produced. As a custodian -- as the
24 custodian's deposition if that's appropriate.

25 MR. HAMMONS: And we would object to

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1 their file for 30 days, and then it -- and then it is
2 automatically deleted and goes to a deleted file,
3 which at some period in time -- but you don't know
4 the specifics with regards to that -- that is then
5 deleted off the system based upon space -- space
6 needs? That was prior to the litigation hold?

7 A That's correct. That's the written E-mail
8 retention policy, is my understanding.

9 Q Did you know whether or not there were
10 any backup tapes of the E-mail drives prior to the
11 litigation hold with regards to those items that
12 were put in the deleted file for retention purposes?
13 Do you know?

14 A I -- I don't know.

15 Q Okay.

16 MS. LONGWELL: I think I'm done. So I
17 have no further questions for you, Mr. Couch.
18 Thank you for your time.

19 THE WITNESS: I will provide these five --
20 is it five exhibits there?

21 MS. LONGWELL: Yes, five exhibits.

22 MS. GENTRY: I don't think we're done,
23 though. Are you guys asking questions?

24 MR. HAMMONS: Not really. On behalf of
25 the Tyson defendants, we don't have any questions

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1 that. Mr. Couch may not be -- isn't, in fact, in all
2 his infinite knowledge and wisdom is not the IT or
3 the electronic custodian for this agency. And that
4 information will be in the process as we work
5 through electronic discovery of identifying those
6 people.

7 MS. LONGWELL: Then let me requalify
8 my objection -- not my objection, my reservation,
9 is that I have the right to conduct a custodian
10 deposition of the electronic files once they are
11 produced regardless of who is identified as the
12 custodian of records.

13 MS. GENTRY: Is that it? Okay. We'll
14 read and sign.

15 (The deposition of DEAN COUCH was
16 concluded at 4:32 PM.)

17 * * * * *

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1 JURAT

2 State of Oklahoma vs. Tyson Foods
3 PR File No. 98334 I, DEAN COUCH, do hereby state under
5 oath that I have read the above and foregoing
6 deposition in its entirety and that the same is a
7 full, true and correct transcription of my
8 testimony so given at said time and place.
910
11
12
13 DEAN COUCH14
15 Subscribed and sworn to before me, the
16 undersigned Notary Public in and for the State of
17 Oklahoma by said witness, DEAN COUCH, on this
18 day of _____, 2006.
1920
21
22 NOTARY PUBLIC

23 STATE OF OKLAHOMA

24 MY COMMISSION EXPIRES: _____

25 (JLG) PR FILE #9833

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1 ERRATA SHEET

2 State of Oklahoma vs. Tyson Foods

3 DEPOSITION OF: DEAN COUCH

4 REPORTER: Jody Graham, CSR, RPR, RMR, CRR

5 TAKEN ON: DECEMBER 18, 2006

6 PR FILE NO 9833

7 PAGE LINE IS SHOULD BE

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1 CERTIFICATE

2 STATE OF OKLAHOMA)

3) SS:

4 COUNTY OF OKLAHOMA)

5 I, Jody Graham, CSR, RPR, RMR, CRR, do
6 hereby certify that on DECEMBER 18, 2006, at the
7 offices of Oklahoma Water Resources Board,
8 Oklahoma City, Oklahoma, there came before me
9 DEAN COUCH, who was duly sworn to testify the
10 truth, the whole truth, and nothing but the truth;
11 and that the foregoing pages constitute a full,
12 true, and correct transcript of the deposition of
13 said witness on the date as indicated.14 I do further certify that I am not counsel,
15 attorney, or relative of either party, or otherwise
16 interested in the event of this suit.
1718 IN WITNESS WHEREOF, I have hereunto
19 set my hand and affixed my seal at my office in
20 Oklahoma City Oklahoma County, Oklahoma, this
21 28th day of December, 2006.
2223
24 Jody Graham CSR, RPR, RMR, CRR

25 CSR No. 203.